

BONDS:  
SHERIFF:  
FEES:  
COUNTIES:

The sheriff of a third class county may not legally accept and retain a fee for the taking of a bail bond in a criminal case.

October 10, 1963

Opinion No. 385

Honorable Robert E. Yocom  
Prosecuting Attorney  
McDonald County  
Pineville, Missouri



Dear Mr. Yocom:

We are in receipt of your opinion request of September 20, 1963, in which you have requested an official opinion of this office. The pertinent part of your letter reads as follows:

"Is the sheriff of a third class county (McDonald County) allowed to accept and retain any fee for taking a bond in a criminal case?"

We have searched the statutes at some length, attempting to find some authority for the sheriff of a third class county accepting and retaining a fee for taking a bond, which we assume to be a bail bond, in a criminal case. We have failed to find any specific authority either in the statutes or the Supreme Court rules with which we could answer this question in the affirmative.

Section 558.140, RSMo 1959, provides a specific penalty for the exaction of fees to which an officer is not entitled. Said section reads as follows:

"Every officer who shall, by color of his office, unlawfully and willfully exact or demand or receive any fee or reward to execute or do his duty, or for any official act done or to be done, that is not due, or more than is due, or before it is due, shall upon conviction be adjudged guilty of a misdemeanor."

Honorable Robert E. Yocom

As authority that the sheriff may not levy such charge, we cite the case of Smith v. Pettis County, 136 S.W. 2d 282, 1.c. 285, where the Court stated, in discussing the right of public officials to compensation:

"The rule is established that the right of a public official to compensation must be founded on a statute. It is equally established that such a statute is strictly construed against the officer. Nodaway County v. Kidder, Mo. Sup., 129 S.W.2d 857; Ward v. Christian County, 341 Mo. 1115, 111 S.W.2d 182  
\* \* \*"

CONCLUSION

It is the opinion of this office, based upon the above discussion, that the sheriff of a third class county may not legally accept and retain a fee for the taking of a bail bond in a criminal case.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Robert R. Northcutt.

Very truly yours,

THOMAS F. EAGLETON  
Attorney General

RN:BJ