

FEEES & SALARIES: Sheriffs in Second Class counties may retain
SHERIFFS: civil fees as prescribed in Section 57.280,
RSMo 1959, only to amount allowed by Section
57.340, RSMo 1959, and are prohibited by Section 57.380, RSMo
1959, from retaining fees collected in criminal cases as out-
lined in Section 57.290, RSMo 1959. Sheriffs and their
deputies in Second Class counties may be reimbursed for travel
expense, incurred in making criminal investigations.

Opinion No. 132

July 15, 1964



Honorable Brunson Hollingsworth
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri

Dear Mr. Hollingsworth:

This opinion is in answer to your letter posing inquiries
in the following language:

"Query. In a County of the Second Class,
which contains less than one hundred
thousand inhabitants, may a Sheriff
retain any fees whatsoever described in
R.S.Mo. 57.280 or 57.290, other than
those allowed him under Section 57.340.
Also refer to 57.380.

"Query. With reference to R.S.Mo. 57.300
and 57.350, may the Sheriff and his
deputies be reimbursed for criminal in-
vestigation mileage for example, mileage
in the course of the investigation of an
unsolved burglary? See also 57.430
(Third and Fourth Class Counties) for
mileage in connection with persons accused
of a criminal offense."

Subsection 1 of Section 57.340, RSMo 1959, has specific
application to counties of the Second Class having a population
of less than one hundred thousand inhabitants, and provides as
follows:

"1. In counties of the second class,
which contain less than one hundred
thousand inhabitants, the sheriff may
withhold and retain, as compensation
for his official services in civil
matters, from the fees, penalties,
charges, commissions and other money

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collected by him for his services in the matters, the sum of three thousand nine hundred dollars for each year of his official term. He shall not retain during any one month, except the last month of each year of his official term, a sum exceeding one-twelfth of the aforesaid three thousand nine hundred dollars, and any amount collected and received in excess of one-twelfth during any such month, shall be paid by him at the end thereof to the county treasurer. He may, during the last month of any year of his official term withhold from the amount collected and received by him for services in civil matters during the month, a sufficient amount as will cause his compensation for the official year to reach the sum of three thousand nine hundred dollars. If at the end of any year of his official term he has not collected and retained the sum of three thousand nine hundred dollars, he may withhold and retain a sufficient amount, from moneys collected by him in civil matters in the succeeding year of his official term, to cause his compensation for the official year for which he has not received his full compensation, to amount to three thousand nine hundred dollars."

It may readily be seen from the language found in subsection 1 of Section 57.340, RSMo 1959, quoted above, that such portion of the statute is directed to "fees, penalties, charges, commissions and other monies" earned and collected by the sheriff in "civil matters". To the extent that fee charges prescribed in Section 57.280, RSMo 1959, result from "civil matters", they may be retained by the sheriff pursuant to the directive found in subsection 1 of Section 57.340, RSMo 1959.

Section 57.290, RSMo 1959, prescribes fees to be charged by sheriffs in criminal cases, and any retention by the sheriff of such fees charged and collected is clearly prohibited by the following language appearing in Section 57.380, RSMo 1959:

"The sheriff in all counties of the second class shall charge, collect and receive, on behalf of the county, every fee, penalty, charge, commission and

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other money that accrues to him or his office for official services rendered in civil and criminal matters, by virtue of any statute of this state, and all the fees, penalties, charges, commissions, and other money collected by him, shall at the end of each month be paid by him to the county treasurer, as provided in section 50.360, RSMo, less that amount of fees from civil matters which he is authorized to retain by section 57.340. He is not entitled to collect the per diem allowed to the sheriff as a member of the board of equalization and board of appeals, as provided in section 138.020, RSMo."

Based on the foregoing statutes your first question must be answered by concluding that the sheriff in a Second Class county having a population of less than one hundred thousand inhabitants may retain fees collected in civil matters as authorized by Section 57.280, RSMo 1959, only in an amount prescribed by Section 57.340, RSMo 1959; and his retention of fees to be collected in criminal cases under Section 57.290, RSMo 1959, is prohibited by Section 57.380, RSMo 1959, quoted above.

Your second question is whether sheriffs and deputies in Second Class counties are entitled to reimbursement for "criminal investigation mileage". As we understand your question, it involves necessary traveling expenses incurred in the course of the investigation of crimes, including those in which the culprit is unknown. Inherent in your question is the further basic question of whether such criminal investigation constitutes part of the official duties of a sheriff. In our opinion, this basic question must be answered in the affirmative.

In Maxwell v. Andrew County, 347 Mo. 156, i.e. 163, 146 SW2d 621, the Supreme Court stated:

"It is true that the sheriff is under a legal duty to investigate alleged crimes and to suppress crime and arrest felons."

And Section 57.100, RSMo, spells out the duties of sheriffs generally in the following language:

"Every sheriff shall quell and suppress assaults and batteries, riots, routs, affrays and insurrections;

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shall apprehend and commit to jail all felons and traitors, and execute all process directed to him by legal authority, including writs of replevin, attachments and final process issued by magistrates."

We believe that both the Maxwell case and the statutory provisions above quoted impose upon sheriffs and their deputies in Second Class counties the duty of making necessary criminal investigations of the kind mentioned in your letter. The Maxwell case held, however, that absent statutory provision therefor, mileage and expenses incurred in connection with criminal investigations may not be paid to a sheriff. Thereafter, Sections 57.350, RSMo Cum. Supp. 1963, and 57.360, RSMo, were (in their original form) enacted as Sections 7 and 8 of Laws, 1945, page 1569, and these statutes have remained unchanged except as concerns the rate of reimbursement for mileage as set forth in Section 57.350.

A study of Section 57.350, RSMo Cum. Supp. 1963, has led us to the conclusion that it has no application to the payment of mileage in criminal investigations. Its purpose is to provide for reimbursement at the specified rate for all miles actually and necessarily traveled in serving summonses, subpoenas, processes, writs and notices. Such mileage is computed from the place where court is usually held (except when court is usually held in more than one place), a provision which would not reasonably have reference to criminal investigations.

However, it is our opinion that Section 57.360, RSMo, does authorize reimbursement, as hereinafter set forth, for travel expenses incurred in criminal investigations. This section provides, in part, as follows:

"The sheriff and his deputies shall be reimbursed out of the county treasury, for actual and necessary traveling expenses, incurred in the performance of their official duties, in addition to the mileage above provided."

We construe Section 57.360 (which, as above pointed out, was enacted as a part of the same act as the original Section 57.350) to mean that in addition to those situations covered by Section 57.350 in which the sheriff is entitled to reimbursement for actual and necessary mileage expense, the sheriff is also entitled to be reimbursed for his actual and necessary travel expenses incurred in the performance of duties which are not included within the provisions of Section 57.350, and this would, of course, include reimbursement for actual and necessary travel expenses incurred in criminal investigations.

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Section 57.360 requires the sheriff to make a written claim for reimbursement for his travel expenses, setting forth all detailed and pertinent information specified by the county court in order to approve the payment thereof. Although this statute does not authorize the payment of mileage, as such, it is our opinion that the county court is authorized, in its discretion, to approve a claim for reimbursement for travel expenses either at a rate per mile or actual out of pocket expenses or other reasonable determination which the county court finds under the circumstances will not be in excess of the actual and necessary expenses incurred by the sheriff and his deputies in traveling in the course of making criminal investigations.

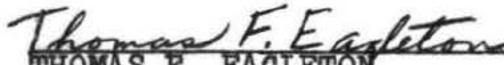
CONCLUSION

It is the opinion of this office that a sheriff of a Second Class county may retain fees collected in civil cases pursuant to Section 57.280, RSMo, only in the amount allowed by Section 57.340, and that none of the fees collected in criminal cases pursuant to Section 57.290, RSMo, may be retained by the sheriff.

It is the further opinion of this office that a sheriff is entitled to reimbursement only for his actual and necessary travel expenses in making criminal investigations and that he can be reimbursed mileage in connection with such services only to the extent that the county court finds under the circumstances that such mileage does not exceed the actual and necessary travel expenses incurred in traveling in the course of such investigation.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Joseph Nessenfeld.

Very truly yours,


THOMAS F. EAGLETON
Attorney General