

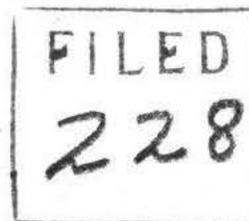
FEEES AND SALARIES:
SHERIFFS:

In a county of the second class with less than one hundred thousand inhabitants a sheriff who receives a commission for a partition sale under Section 528.610, RSMo 1959, must collect and pay such commission to the county treasurer as directed by Section 57.380, RSMo 1959, minus that amount he may retain under Section 57.340, RSMo 1959.

OPINION NO. 228

June 7, 1965

Honorable Donald E. Dalton
Prosecuting Attorney
St. Charles County
First National Bank Building
St. Charles, Missouri



Dear Mr. Dalton:

This is in answer to your request for an opinion of this office, which reads as follows:

"Please furnish me with an official opinion of your office on the following question:

"'In a county of the second class which contains less than one hundred thousand inhabitants, is the compensation of a sheriff for partition sales, pursuant to Section 528.610 V.A.M.S., subject to the limitation specified in Section 57.340?'

"Your attention is directed to Section 57.280 with reference to itemized fees allowed in 'civil matters', which it will be noted does not specifically include a commission allowed in partition suits. Your attention is also directed to the fact that the Court is authorized to appoint a special commissioner to conduct the sale in partition suits in lieu of the sheriff (See Section 528.580). Your attention is also directed to Section 57.380 and to your previous opinion number 132, dated July 15, 1964, prepared by Assistant Joseph Nessenfeld."

Chapter 528, RSMo, applies to partition suits in Missouri. Section 528.610, RSMo 1959, allows a commission to sheriffs for making partition sales and reads as follows:

"As a compensation for his services in making a sale of real estate under the provisions of this chapter by order of court for the purpose of partition, the sheriff shall receive a commission on the amount of sales not exceeding two per cent on the first one thousand dollars, and one per cent on all sums over that amount and under five thousand dollars, and one-half of one per cent on all sums over that amount."

Chapter 57, RSMo, applies to sheriffs in Missouri. Section 57.380, RSMo 1959, makes it the duty of the sheriffs of second class counties to collect fees, etc., and reads as follows:

"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 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."

Thus, when a sheriff is allowed a commission under Section 528.610, it is his duty to collect and pay that commission to the county treasurer unless he is allowed to retain part or all of said commission by virtue of Section 57.340, RSMo 1959. Section 57.340 (1) reads 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 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."

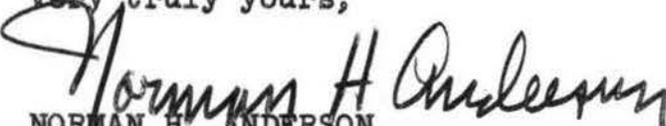
The fact that Section 57.280, RSMo 1959, establishing certain fees for sheriffs, does not list partition sales does not affect the above conclusion since it is the duty of the sheriff under Section 57.380 to collect and pay to the county treasurer any fees, etc., accruing to the sheriff or his office "by virtue of any statute of this state."

CONCLUSION

It is the opinion of this office that in a county of the second class with less than one hundred thousand inhabitants a sheriff who receives a commission for a partition sale under Section 528.610, RSMo 1959, must collect and pay such commission to the county treasurer as directed by Section 57.380, RSMo 1959, minus the amount he may retain under Section 57.340, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Walter W. Nowotny, Jr.

Very truly yours,


NORMAN H. ANDERSON
Attorney General