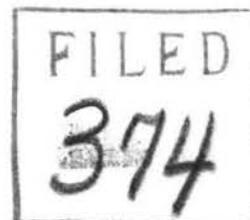


SHERIFFS:
OFFICERS:
COUNTY OFFICERS:
COMPENSATION:
FEES:
ACCOUNTABLE FEES:

Sheriffs entitled to compensation provided in Senate Bill 237 of the Seventy-fourth General Assembly during the present term of office; must pay all criminal fees into county treasury; mileage for serving criminal warrants and criminal investigation and payment for person's meals are "reimbursable expenses"; salary provisions of Sections 57.390, 57.400, 57.403, 57.405 and Senate Bill 237 are "remunerations" within meaning of Senate Bill 237.

OPINION NO. 374

October 17, 1967



Honorable Haskell Holman
State Auditor
State of Missouri
Capitol Building
Jefferson City, Missouri

Dear Mr. Holman:

This is in answer to your request for an opinion asking a number of questions concerning Senate Bill 237 enacted by the Seventy-fourth General Assembly.

The first question reads as follows:

"1. Are sheriffs of third and fourth class counties entitled to receive, on and after October 13, 1967, the additional compensation provided for in paragraph 2 Section 1 and paragraph 2 Section 2, respectively, Senate Bill 237 Seventy-Fourth General Assembly or does the provision of Section 13, Article VII of the Constitution prohibit said increase during the present term of such officers?"

Senate Bill No. 237 reads in part as follows:

"Section 1. 1. Sheriffs in counties of the third class shall, in addition to other duties imposed upon them by law, aid and assist the jury commissioners in such counties by conducting all investigations into the identity, of all prospective jurors summoned for jury duty

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by such jury commissioners, and upon request of the board of jury commissioners, make and file a report with such board setting out the results of such investigation.

2. In addition to the salary, travel expenses, reimbursement expenses, and any other compensation now provided by law, the sheriffs in each county of the third class, for the performance of the foregoing duties, shall receive the sum of two thousand five hundred dollars per year, payable in twelve equal monthly installments out of the county treasury, by warrants drawn by the county court upon the county treasury.

Section 2. 1. Sheriffs in counties of the fourth class shall, in addition to other duties imposed upon them by law, aid and assist the jury commissioners in such counties by conducting all investigations into the identity, of all prospective jurors summoned for jury duty by the jury commissioners, and upon request of the board of jury commissioners, make and file a report with such board setting out the results of the investigation.

2. In addition to the salary, travel expenses, reimbursement expenses, and any other compensation now provided by law, the sheriffs in each of the fourth class, for the performance of the foregoing duties, shall receive the sum of two thousand dollars per year, payable in twelve equal monthly installments out of the county treasury, by warrants drawn by the county court upon the county treasury."

Section 13 of Article VII of the Missouri Constitution reads as follows:

"The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any office be extended."

This constitutional provision applies to sheriffs. State ex rel Selleck v. Gordon, 254 Mo. 471, 162 S.W. 629.

The Supreme Court of Missouri in Little River Drainage District v. Lassater, 325 Mo. 493, 29 S.W.2d 716, 719, said the following:

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"[6] The constitutional inhibition only applies to compensation or fees of officers for performing duties incident to their offices, and has no application to additional duties imposed upon such officers not ordinarily incident to their offices."

The question therefore is whether Senate Bill 237 imposes additional duties on sheriffs of third and fourth counties not ordinarily incident to their office.

There are presently a number of statutes imposing certain duties on sheriffs in relation to juries. Chapter 494, RSMo, contains general provisions as to juries. Section 1 of Section 494.250, RSMo 1959, provides for the selection of jurors by the board of jury commissioners. Subsection 2 reads as follows:

"2. In all cases where the board of jury commissioners fails to select jurors and alternates, as required by law, the sheriff of the county shall summon petit jurors from the several townships in the county, according to their respective populations, as nearly as may be, not less than ten days before the first day of the term of court for which the jurors are summoned; and the sheriff when ordered by the court demanding a jury shall summon petit jurors during the term from the bystanders, after the list of alternate petit jurors has been exhausted. No person shall be summoned as a standing juror twice within the period of one year in any court of record."

Section 494.260, RSMo 1959, provides for the filling of vacancies when a juror is disqualified and also imposes a duty on the sheriff. This section reads in part as follows:

"* * * the Court shall order the sheriff to summon from the list of alternate petit jurors drawn by the board of jury commissioners a sufficient number of persons to serve as jurors for such term or part of term of said court as follows: * * *; provided, that if it shall be necessary to fill vacancies in the jury panel for the trial of any one case the court may in its discretion order the sheriff to summon from the bystanders a sufficient number of qualified persons to fill such vacancies in such case."

Section 494.280, RSMo 1959, provides for the recording and certification of the list of jurors and also for the issuance of a

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summons for jury duty. The sheriff has the duty of serving the summons.

Sections 57.280 and 57.290, RSMo 1959, provide for fees for sheriffs. Included are fees for summoning a jury.

It is our opinion that neither the above cited statutes nor any others impose the duties prescribed by Senate Bill 237. Therefore, the duties imposed by Senate Bill 237 are additional duties and are not subject to Section 13 of Article VII of the Constitution of Missouri.

The second question reads as follows:

"2. Are all fees received by the sheriff in third and fourth class counties for duties performed in connection with criminal services of every nature deemed accountable fees and to be reported and paid to the county treasurer each month as required by Section 50.370, RSMo., 1959?"

The applicable parts of Senate Bill 237 relating to this question are subsections 3 and 4 of Section 2 and read as follows:

"3. Any other provision of law notwithstanding, the sheriffs in each county of the third class shall retain only that portion of fees other than reimbursable expenses allowed to him by law which, together with all other remuneration provided by law, shall not exceed the sum of twelve thousand five hundred dollars. The balance of such fees shall be paid into the county treasury.

4. Any other provision of law notwithstanding, the sheriffs in each county of the fourth class shall retain only that portion of fees other than reimbursable expenses allowed to him by law which, together with all other remuneration provided by law, shall not exceed the sum of ten thousand dollars. The balance of such fees shall be paid into the county treasury."

Section 13 of Article VI of the Constitution of Missouri reads as follows:

"All state and county officers, except constables and justices of the peace, charged with the investigation, arrest, prosecution, custody, care, feeding, commitment, or transportation of persons accused of or convicted of a criminal offense

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shall be compensated for their official services only by salaries, and any fees and charges collected by any such officers in such cases shall be paid into the general revenue fund entitled to receive the same, as provided by law. Any fees earned by any such officers in civil matters may be retained by them as provided by law."

Section 57.410, RSMo 1959, reads as follows:

"In all counties of the third and fourth classes, the sheriff shall charge and collect for and on behalf of the county every fee accruing to his office which arises out of his duties in connection with the investigation, arrest, prosecution, care, commitment, and transportation of persons accused of or convicted of a criminal offense, except such criminal fees as are chargeable to the county. The sheriff may retain all fees collected by him in civil matters."

Section 50.370, RSMo 1959, provides that every officer of a third and fourth class county who receives fees which are payable to the county must file a report with the county court and pay over all such fees to the county treasurer.

Thus, it is clearly required by the constitution and by statute that sheriffs must pay fees collected for criminal services to the county. The question is whether subsections 3 and 4 of Section 2 of Senate Bill 237 provide that sheriffs of third and fourth class counties may retain all or a portion of criminal fees.

The first rule in statutory construction is to determine the intent of the legislature and to apply to an act its plain and rational meaning. *State ex rel LeNeve v. Moore, Mo.*, 408 S.W.2d 47. A statute must be construed, if possible, so as to give it force and effect and render it operative. *State ex rel Clay Equipment Corp. v. Jensen, Mo.*, 363 S.W.2d 666. New legislation must be construed and applied consistently with the construction placed upon the related parts of the general law. *In re Dugan's Estate, Mo.App.*, 309 S.W.2d 137.

With these rules in mind it is our opinion that subsections 3 and 4 of Section 2 of Senate Bill 237 do not provide that sheriffs of third and fourth class counties may retain all or a portion of criminal fees. It is our opinion that the legislature intended that sheriffs of third and fourth class counties may retain a portion of the fees that they are otherwise authorized to retain and that these new sections merely put a limit on the total amount.

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The third question is whether the expenses provided for in Sections 221.090, RSMo 1959, and 57.430, RSMo Supp. 1965, are "reimbursable expenses" as referred to in subsection 3 and 4 of Section 2 of Senate Bill 237.

Subsection 1 of Section 221.090, supra, directs the sheriff of third and fourth class counties to feed prisoners in the county jail. This section reads in part as follows:

"1. In each county of the third or fourth class, the sheriff shall furnish wholesome food to each prisoner confined in the county jail. At the end of each month, he shall submit to the county court a statement supported by his affidavit, of the actual cost incurred by him in the boarding of prisoners, together with the names of the prisoners, and the number of days each spent in jail. The county court shall audit the statement and draw a warrant on the county treasury payable to the sheriff for the actual and necessary cost."

Enclosed are Attorney General Opinions No. 45, dated March 10, 1952, issued to the Honorable D. R. Jennings, and No. 322, dated October 12, 1964, issued to the Honorable Alden S. Lance, which discuss Section 221.090, supra. The substance of these opinions is that a sheriff of a third and fourth class county must furnish food to prisoners in the county jail and are then entitled to reimbursement for the actual cost of such food. It is our opinion that such payments to a sheriff by the County under Section 221.090, supra, are "reimbursable expenses" as referred to in subsections 3 and 4 of Section 2 of Senate Bill 237.

Section 57.430, supra, provides for actual and necessary expenses for sheriffs when serving warrants or other criminal process and also expenses in connection with criminal investigation. This section reads in part as follows:

"In addition to the salary provided in sections 57.390 and 57.400, the county court shall allow the sheriffs and their deputies, payable at the end of each month out of the county treasury, actual and necessary expenses for each mile traveled in serving warrants or any other criminal process not to exceed ten cents per mile, and actual expenses not to exceed ten cents per mile for each mile traveled, the maximum amount allowable to be two hundred dollars during any one calendar month in the performance of their official duties in connection with the investigation of persons accused of or convicted of a criminal offense. When mileage is allowed,

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it shall be computed from the place where court is usually held, and when court is usually held at one or more places, such mileage shall be computed from the place from which the sheriff or deputy sheriff travels in performing any service. When two or more persons who are summoned, subpoenaed, or served with any process, writ, or notice, in the same action, live in the same general direction, mileage shall be allowed only for summoning, subpoenaing or serving of the most remote."

The same principles as applied to Section 221.090, supra, apply here where the language of the statute is explicit that mileage shall be paid only for actual expenses. Therefore, it is our opinion that payments to a sheriff for mileage expenses allowed under Section 57.430, supra, are "reimbursable expenses" as referred to in subsections 3 and 4 of Section 2 of Senate Bill 237.

The fourth question is whether compensation under certain statutes are included as "remuneration" as referred to in subsection 3 and 4 of Section 2 of Senate Bill 237.

The statutory compensations you have referred to concerning third class counties are Sections 57.390, 57.403, and 57.405, RSMo 1959, and subsection 2 of Section 1 of Senate Bill 237. The statutory compensations you have referred to concerning fourth class counties are Sections 57.400, 57.403 and 57.405, RSMo 1959, and subsection 2 of Section 2 of Senate Bill 237.

Section 57.390, supra, provides compensation of varying amounts for sheriffs of third class counties depending on the population of the county. The compensation is for the performance of certain duties as follows:

"The sheriff in Counties of the third class shall receive annually for his official services in connection with the investigation, arrest, prosecution, custody, care, feeding, commitment and transportation of persons accused of or convicted of a criminal offense, the following sums: * * *"

Section 57.400, supra, is comparable to Section 57.390, supra, and also provides compensation of varying amounts for the performance of official services in connection with the criminal statutes. The difference is the amounts and that they are for sheriffs of fourth class counties.

Subsection 1 of Section 57.403, supra, provides for a yearly salary of one thousand dollars for sheriffs of third class counties and subsection 2 provides for a yearly salary of five hundred dollars for sheriffs of fourth class counties for the performance of the

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duties required by Section 57.105, RSMo 1959. Section 57.105, supra, imposes a duty on sheriffs of third and fourth class counties to take pictures of and fingerprint persons accused of or convicted of a criminal offense when the person is in the custody of the sheriff.

Subsection 1 of Section 57.405, supra, provides for yearly compensation in addition to that provided by Section 57.390, supra, for sheriffs of third class counties and subsection 2 provides for yearly compensation in addition to that provided by Section 57.400, supra, for sheriffs of fourth class counties. This section was enacted in 1953 and amended in 1957 and is merely a pay raise for the performance of the duties required by Sections 57.390 and 57.400, supra.

Subsection 2 of Section 1 and subsection 2 of Section 2 of Senate Bill 237 provide for compensation for sheriffs of third and fourth class counties for the performance of additional duties imposed by subsection 1 of Section 1 and subsection 1 of Section 2 of Senate Bill 237. These provisions are quoted and discussed in question one of this opinion.

It is our opinion that all the above compensations referred to are included as "remuneration" as referred to in subsections 3 and 4 of Section 2 of Senate Bill 237. These compensations should then be totaled to determine the amount of fees that may be retained to equal the sum of twelve thousand five hundred dollars for sheriffs of third class counties and ten thousand dollars for sheriffs of fourth class counties. We have already held in question two of this opinion that fees for criminal services are not such fees that may be retained. It is our opinion that these fees allowed to sheriffs by law and which may be retained up to a certain amount are non-accountable fees received for services in civil matters.

CONCLUSION

1. It is the opinion of this office that the duties imposed by Senate Bill 237 enacted by the Seventy-fourth General Assembly are additional duties and these are not subject to Section 13 of Article VII of the Constitution of Missouri. Therefore, sheriffs of third and fourth class counties are entitled to receive on and after October 13, 1967, the additional compensation provided for in paragraph 2 of Section 1 and paragraph 2 of Section 2 of Senate Bill 237.

2. Subsections 3 and 4 of Section 2 of Senate Bill 237 do not provide that sheriffs of third and fourth class counties may retain all or a portion of criminal fees and that such fees are accountable and must be reported and paid to the county treasurer as required by Section 50.370, RSMo 1959.

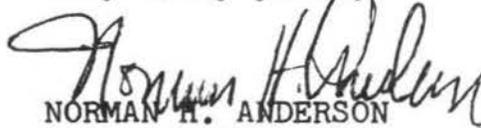
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3. The expenses provided for in Sections 221.090, RSMo 1959, and 57.430, RSMo Supp. 1965, are "reimbursable expenses" as referred to in subsections 3 and 4 of Section 2 of Senate Bill 237.

4. The compensations provided for in Sections 57.390, 57.400, 57.403 and 57.405, RSMo 1959, and subsection 2 of Section 1 and subsection 2 of Section 2 of Senate Bill 237, are included as "remuneration" as referred to in subsections 3 and 4 of Section 2 of Senate Bill 237.

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

Very truly yours,



NORMAN H. ANDERSON
Attorney General

Enclosures: Opinion No. 45
3/10/52 - Jennings
Opinion No. 322
10/12/64 - Lance