

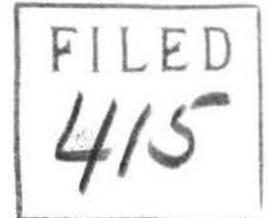
SHERIFFS:  
OFFICERS:  
COUNTY OFFICERS:  
COMPENSATION:  
FEES:  
ACCOUNTABLE FEES:

Sheriffs of third and fourth class counties may under Senate Bill 237 enacted by the Seventy-fourth General Assembly retain all non-accountable civil fees received by them as of October 13, 1967, even though the amounts exceed the annual limits set by Senate Bill 237. Sheriffs who have received

fees up to or in excess of the limits set by Senate Bill 237 as of October 13, 1967, are not entitled to retain any civil fees received between October 13, 1967, and January 1, 1968. Sheriffs who have not received civil fees up to the limits set by Senate Bill 237 as of October 13, 1967, may retain all civil fees received after that date and up to January 1, 1968 until the limits of Senate Bill 237 are reached.

The expenses that a sheriff of a third or fourth class county may receive under Section 548.241, RSMo 1959, are not received in his official capacity as sheriff and therefore are not subject to the provisions of Senate Bill 237.

OPINION NO. 415



NOVEMBER 21, 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 several questions concerning Senate Bill 237 enacted by the Seventy-fourth General Assembly.

The first question reads as follows:

"Are the maximum amounts of \$12,500.00 and \$10,000.00 which sheriffs of third and fourth class counties, respectively, are allowed to retain under the provisions of Senate Bill 237 applicable for the year 1967, or would the sheriffs be entitled to retain all civil (non-accountable) fees received by them prior to October 13, 1967?"

The applicable portion of Senate Bill 237 reads as follows:

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"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 sheriff 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."

Senate Bill 237 became law on October 13, 1967. Section 1.130, RSMo 1959. Prior to October 13, 1967, there was no limit on the amount of civil fees that could be retained by sheriffs of third and fourth class counties.

The fees allowed by law which now may be retained up to a certain amount above "other remuneration" are non-accountable fees received for services in civil matters. Section 13, Article VI, Constitution of Missouri; Section 57.410, RSMo 1959; and Attorney General Opinion No. 374, dated October 17, 1967, issued to the Honorable Haskell Holman (copy enclosed). That opinion also discusses and rules on what constitutes "remuneration."

Section 13, Article VI, provides in part as follows:

" \* \* \* Any fees earned by any such officers in civil matters may be retained by them as provided by law."

Such officers include sheriffs of third and fourth class counties.

Section 57.410, supra, relating to sheriffs of third and fourth class counties, provides in part as follows:

" \* \* \* The sheriff may retain all fees collected by him in civil matters."

Civil fees which may be retained by sheriffs of third and fourth class counties are set out in Section 57.280, RSMo 1959. This section lists the services for which fees are allowed and the amount of the fee for each service. The section is silent as to time and method of payment. Therefore, prior to the enactment of Senate Bill 237

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these fees, since they were non-accountable, could be retained by the sheriffs upon payment. The effect of Senate Bill 237 is to make all fees above the twelve thousand five hundred and ten thousand limits accountable. That would necessarily mean that the fees up to the limits are subject to record keeping although not strictly accountable.

The first question that must be answered is whether a sheriff who prior to October 13, 1967, already collected fees up to or in excess of the limits set by Senate Bill 237 may retain the full amount or whether he must account for the fees in excess of the limits.

Generally, statutes are construed to operate prospectively unless legislative intent that they be given retrospective or retroactive operation clearly appears from express language of acts, or by necessary or unavoidable implication. State ex rel. Clay Equipment Corp. v. Jensen, Mo., 363 S.W.2d 666. Statutes affecting substantive rights are not construed retrospectively in the absence of clearly expressed legislative intent. Center School Dist. Mo. 58 of Jackson County v. Kenton, Mo., 345 S.W.2d 120. A statute will generally be given a prospective operation, although expressed in the present tense. State ex rel. St. Joseph Lead Co. v. Jones, 270 Mo. 230, 192 S.W.2d 980. The word "shall", as used in a statute, ordinarily applies to something to be done or to take place in the future. Minter v. Bradstreet Co., 174 Mo. 444, 73 S.W. 668.

It is our opinion that Senate Bill 237 is not retrospective; and thus sheriffs of third and fourth class counties may retain all civil fees received prior to October 13, 1967, even though the amounts exceed the annual limits set by Senate Bill 237.

The next question, then, is whether the limits set by Senate Bill 237 are applicable to civil fees received between October 13, 1967, and January 1, 1968,

It is our opinion that the limits set by Senate Bill 237 do apply to fees received after October 13, 1967. Accordingly, sheriffs who have received fees up to or in excess of the limits set by Senate Bill 237 as of October 13, 1967, are not entitled to retain any civil fees received between October 13, 1967, and January 1, 1968. Sheriffs who have not received civil fees up to the limits set by Senate Bill 237 as of October 13, 1967, may retain all civil fees received after that date and up to January 1, 1968, until the limits of Senate Bill 237 are reached. The limits for this last situation are determined by all the civil fees received during the entire year of 1967.

Your second question reads as follows:

"In the event a sheriff of either a third or fourth class county is designated by name and official title of office to act as an agent

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of the Governor under the provisions of Section 548.221, RSMo., 1959, would the amount of expenses received from the state or county under the provisions of paragraphs 1 and 2, respectively, Section 548.241, RSMo., 1959 be considered as reimbursable expenses or should such amount be included in the fees in determining the maximum amounts retainable under the provisions of paragraphs 3 and 4 Section 2 Senate Bill 237?"

We have already quoted paragraphs 3 and 4 of Section 2 of Senate Bill 237 which set limits on fees allowed by law other than reimbursable expenses which may be retained by sheriffs of third and fourth class counties.

Chapter 548, RSMo, is Missouri's extradition law and Section 548.221, RSMo 1959, reads as follows:

"Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed."

A sheriff of a third or fourth class county may be designated an agent under this section.

Section 548.241, RSMo 1959, provides for expenses in connection with extradition and reads as follows:

"1. Except as in this section otherwise provided, all expenses accruing under section 548.221 upon being ascertained to the satisfaction of the governor, shall be allowed on his certificate and paid out of the state treasury as other demands against the state.

"2. Expenses incident to the extradition of any person charged with violating section 559.350, RSMo, shall be paid by the county in which the offense is alleged to have been committed. Application for the payment of the

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expenses shall be made by the agent designated by the governor and filed in the office of the county clerk or of the comptroller of the city of St. Louis. The application shall state the name of the accused and the time, place and pertinent facts of the alleged offense and shall include an itemized statement of the necessary and actual expenses incurred in the extradition of the person and shall be signed and verified by the applicant. The county court or the comptroller of the city of St. Louis, if the application and statement are found correct, shall issue appropriate warrants for the payment of the expenses out of the county or city treasury."

Enclosed is a copy of Attorney General Opinion No. 33, dated August 2, 1948, issued to the Honorable Charles E. Ginn, holding that when a sheriff is designated by the Governor as agent under these laws he is not acting in his official capacity as sheriff and therefore is entitled to retain expenses paid to him. Since the sheriff is not acting in his official capacity the expenses he receives under Section 548.241, RSMo 1959, are not subject in any way to the provisions of Senate Bill 237.

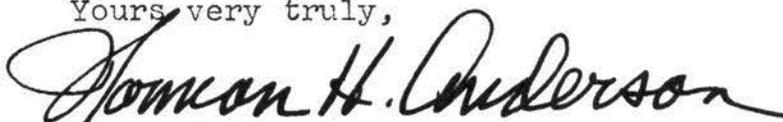
#### CONCLUSION

It is the opinion of this office that sheriffs of third and fourth class counties may under Senate Bill 237 enacted by the Seventy-fourth General Assembly retain all non-accountable civil fees received by them as of October 13, 1967, even though the amounts exceed the annual limits set by Senate Bill 237. Sheriffs who have received fees up to or in excess of the limits set by Senate Bill 237 as of October 13, 1967, are not entitled to retain any civil fees received between October 13, 1967, and January 1, 1968. Sheriffs who have not received civil fees up to the limits set by Senate Bill 237 as of October 13, 1967, may retain all civil fees received after that date and up to January 1, 1968, until the limits of Senate Bill 237 are reached.

It is our further opinion that the expenses that a sheriff of a third or fourth class county may receive under Section 548.241, RSMo 1959, are not received in his official capacity as sheriff and therefore are not subject to the provisions of Senate Bill 237.

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

Yours very truly,



NORMAN H. ANDERSON  
Attorney General

Enclosures: Op. No. 374, 10/17/67-Holman Op. No. 33, 8/2/48-Ginn