

Answer by letter--Boicourt

9-11-69

OPINION LETTER NO. 373

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Honorable G. William Weier
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri 63050

Dear Mr. Weier:

This letter is in response to your request reading as follows:

Can a judge of the Circuit Court of Jefferson County, a second class county, appoint deputies under Section 57.220, RSMo 1959, without compensation? In the alternative, if compensation is necessary what would be the requirements therefor?

Section 57.220, RSMo 1959, provides that:

"The sheriff, in a county of the second class, shall be entitled to such a number of deputies as the judges of the circuit court shall deem necessary for the prompt and proper discharge of the duties of his office, provided however, such number of deputies appointed by the sheriff shall not be less than one chief deputy sheriff and one additional deputy for each five thousand inhabitants of the county according to the last decennial census. Such deputies shall be appointed by the sheriff, but no appointment shall become

Honorable G. William Weier

effective until approved by the judges of the circuit court of the county. The judges of the circuit court, by agreement with the sheriff, shall fix the salaries of such deputies. A statement of the number of deputies allowed the sheriff, and their compensation, together with the approval of any appointment by the judges of the circuit court shall be in writing and signed by them and filed by the sheriff with the county court."

You will note that the statute confers upon circuit judges in second class counties the power to determine the number of deputies necessary to aid the sheriff in proper discharge of the duties of his office and to approve the deputy appointees of the sheriff. The statute does not give circuit judges the power to appoint deputy sheriffs. At common law, circuit judges had no inherent power to appoint deputy sheriffs. See 80 C.J.S., Sheriffs and Constables § 22a(1)p. 188. Therefore, since the only two Missouri statutes concerning the appointment of deputy sheriffs in second class counties, §§ 57.119 and 57.220, give the power to appoint deputies to the sheriff, circuit judges have no such power.

The circuit judges do have authority, however, to determine the necessary number of deputies, approve the sheriff's appointments (such approval being a prerequisite to the effectiveness of such appointments) and to fix the salaries of deputy sheriffs by agreement with the sheriff.

Under § 57.220, RSMo 1959, the judges of the circuit courts are required to prepare and sign a statement as to the number of deputies allowed and their compensation. The sheriff is to file such statement together with signed approvals of appointments.

We would direct to your attention the fact that the statute so reads that the circuit judges, by agreement with the sheriff, are to fix the salaries of deputies. The use of the term "salary" would manifest an intention that periodic compensation be paid at regular intervals for the public services rendered or performed. 77 C.J.S. "Salary," pp. 553-555. "Salary" usually connotes weekly, monthly, or yearly periodic payments.

Honorable G. William Weier

The circuit judges could sign statements authorizing nominal compensation, for example, one dollar per year. It would be unadvisable, under the statute, to appoint deputies which are to serve without compensation, because of the language relating to the fixing of "salaries" indicating that recompense is to be made for the public services rendered by such deputies.

It is, therefore, our view that while circuit judges of Jefferson County cannot appoint deputy sheriffs, they can allow a larger staff of deputies to be appointed, approve the sheriff's appointment of additional deputies, and agree with the sheriff that only nominal, but some, compensation be paid the additional appointees.

Yours very truly,

JOHN C. DANFORTH
Attorney General