

January 7, 1972

OPINION LETTER NO. 44
Answer by Letter - Klaffenbach

Honorable Ray Lee Caskey
Prosecuting Attorney
Oregon County
Post Office Box 278
Alton, Missouri 65606



Dear Mr. Caskey:

This letter is in response to your opinion request in which you ask the following question:

"Section 57.409 [sic] states that a sheriff is given the duty of filing with the circuit court of the county a report on the conditions of the county jail, the number of prisoners confined in the jail, together with recommendations relating to its operation, and also provides that where the population is more than seven thousand five hundred and less than ten thousand the sheriff shall receive seven thousand and one hundred dollars. Where the sheriff has not made the reports, is he entitled to the compensation provided?"

You also state:

"In January 1969, Section 57.407 became law. This section sets up a duty of the sheriff of making reports to the Circuit court on the conditions of the county jail, the number of prisoners confined in the jail, together with recommendations relating to its operation, and provides that for this duty the sheriff will receive additional salary. The sheriff of Oregon County did not provide in his budgets

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for 1969, 1970, or 1971 for any increase in salary due to this section. Nor did he file any reports in 1969, 1970 or 1971 pursuant to the above noted statute. When the books were audited in 1971, the auditors office indicated that the county owed the sheriff \$ _____ which he was entitled to because of the above noted section. Now the question arises--is the sheriff entitled to the increase in salary even if he hasn't done the duties provided for in this section?"

Section 57.407, RSMo 1969, relating to sheriffs in third class counties was a part of Senate Bill No. 165 of the 75th General Assembly.

That section provides in full:

"1. The sheriff in counties of the third class shall on January first of each year and every three months thereafter file with the circuit court of the county a report on the conditions of the county jail, the number of prisoners confined in the jail, together with recommendations relating to its operation.

"2. In addition to the salary, travel expenses, reimbursement expenses, and any other compensation now provided by law, the sheriff in each county of the third class, for the performance of these duties, shall receive the following sums per year: In counties having a population of less than seven thousand five hundred, the sum of six thousand eight hundred dollars; in counties having a population of seven thousand five hundred and less than ten thousand, the sum of seven thousand one hundred dollars; in counties having a population of ten thousand and less than eleven thousand five hundred the sum of seven thousand four hundred dollars; in counties having a population of eleven thousand five hundred and less than fifteen thousand, the sum of seven thousand seven hundred dollars; in counties having a population of fifteen thousand and less than twenty-four thousand, the sum of seven thousand nine hundred dollars; in counties having a population of twenty-four thousand and less than thirty thousand, the sum of seven thousand eight hundred dollars; and in counties

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having a population of thirty thousand and more, the sum of seven thousand five hundred dollars, payable in twelve equal monthly installments out of the county treasury, by warrants drawn by the county court upon the county treasury.

"3. In counties of the third class after October 13, 1969, the sheriff shall pay all fees collected by him in civil matters, and which were previously retainable by him, into the county treasury, except charges for each mile traveled, allowable to him, which he may retain, in serving civil process.

"4. Notwithstanding other provisions of this section the total compensation of sheriffs of counties of the third class with an assessed valuation of less than twenty million dollars shall not exceed ten thousand dollars, excluding mileage."

In our Opinion No. 525, dated December 16, 1969 to the Honorable N. William Phillips, copy enclosed, this office held that the sheriff of a third class county was entitled to the additional compensation even though such county had no county jail. We are also enclosing a copy of Opinion No. 387, dated October 9, 1969 to the Honorable Robert B. Paden which also discusses Senate Bill No. 165.

Under the holding of State v. Carpenter, 388 S.W.2d, 823 (Mo. 1965) which we cited in our opinion to Phillips, an officer is entitled to the emoluments of his office even though he does not perform his duties. This appears to be a well settled rule as indicated in Vol. 22A Missouri Digest, Officers, p. 72.

In the same context it is interesting to note that the Missouri Supreme Court in Reed v. Jackson County, 142 S.W.2d 862 (1940) held that it is against public policy for public officers to, by agreement or otherwise, accept a lesser compensation than that provided by law.

Although Section 57.407 states that the payment provided for therein is for the additional services required nevertheless such compensation becomes a part of the emoluments of the office and it is our view, in answer to your question, that even though such an officer does not render the services, he is entitled to such payments.

Finally, we note that the act is mandatory in that the duties shall be performed by the sheriff. We do not pass upon the question of whether such refusal constitutes sufficient grounds for removal

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of the sheriff from office in an appropriate action or whether the performance of such duties can be enforced by an appropriate order directed to the sheriff by the circuit court with which he is required to file the report.

Finally, you indicate that the amount provided in Section 57.407 for the performance of such duties has not been properly budgeted. In this respect we note that in Gill v. Buchanan County, 142 S.W.2d 665, (Mo. 1940) the court considered whether the county was liable for a county judge's salary when the county had failed to make sufficient allowance in the county's budget for the payment of such salary. In holding that the county could not discharge all or part of its obligation by failing to budget the full salary due such officer, the Supreme Court stated at l.c. 668:

" . . . Certainly such annual obligations imposed upon the county by the Legislature would be valid from the first of the year, if within the limits of the constitutional provisions fixing the county's authority to raise revenue during each year to pay them; and no part of any such obligation could become invalid merely because the county court decided to incur other obligations for different purposes during the year. To so hold would amount to recognition of authority in the county court to ignore statutes, and to say that it could make its own choice as to whether it would follow valid acts of the Legislature or use all of its revenue for different purposes. . . ."

The Court continued stating:

" . . . Certainly such obligations imposed by the Legislature were intended to have priority over other items as to which the county court had discretion to determine whether or not obligations concerning them should be incurred. They must be considered to be in the budget every year because the Legislature has put them in and only the Legislature can take them out or take out any part of these amounts. . . ."

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 525, 12/16/69, Phillips
Op. No. 387, 10/9/69, Paden