

SHERIFF:
DEPUTY SHERIFFS:
SALARY OF DEPUTY SHERIFFS:
FEES OF SHERIFFS:
SHERIFF'S FEES:

Deputy sheriff of Class 3 county cannot be paid fee of \$3.00 per day for attendance upon court in addition to his regular salary.

May 18, 1955



Mr. Robert E. Crist
Prosecuting Attorney
Shelby County
Shelbina, Missouri

Dear Mr. Crist:

You recently asked for an official opinion of this office wherein the question was:

"Section 57.250 R.S. 1949 provides for compensation for a deputy sheriff. Section 57.280 R.S. 1949 provides for fee of sheriffs. The sheriff may have three deputies attending court and be allowed \$3.00 per day for each deputy, and this fee is paid to the sheriff and not the deputies.

"Question: May a circuit judge fix the compensation of deputy sheriffs at a regular salary and in addition allow for attending court?

"The proposed order of the circuit judge is as follows: Now on this _____ day of _____, 1955, it is hereby ordered that in addition to the regular salary the deputy sheriff of Shelby County, Missouri, shall be allowed and paid to John Doe the same allowance for attendance upon the court, while same is in session, as allowed to the sheriff of Shelby County, Missouri, the sum of \$3.00 per day. It is further ordered that his regular salary be increased from \$_____ per month to \$_____ per month."

By the provisions of Section 57.250, RSMo. 1949, the circuit court may make an order authorizing the sheriff to appoint a given number of deputies and assistants and specify their compensation... This is the only section of the statutes applying to your county which provides for the setting of the pay of deputy

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sheriffs and it is not believed that this authorizes compensation on a fee basis. The proposed order provides that the deputy shall receive the same fee as the sheriff for attending court, i.e., \$3.00 per day, in addition to his regular salary.

Section 57.280 provides for the fees of sheriffs and, among other things, that the sheriff shall be allowed "for attending each court of record or criminal court and for each deputy actually employed in attendance upon such court the number of such deputies not to exceed three per day - - - \$3.00." This section refers only to sheriffs and only the person holding the office of sheriff is entitled to recompense thereunder. Further, this statute does not authorize the payment of fees to deputy sheriffs and it does not authorize the payment of such fees twice, once to the sheriff, and once to the deputy.

Where the Legislature has decided that fees listed in a fee schedule comparable to that contained in Section 57.280, should be paid to a deputy the Legislature has specifically so provided as was done, for instance, in paragraph 2 of Section 57.290, RSMo. 1953 Cum. Supp.

It would, therefore, appear that the proposed order providing for a salary plus a fee to the deputy is not within the intention of the Legislature and exceeds the power granted by Section 57.250 wherein the judge is authorized to fix the compensation of the deputy. It is a general principle in the law of Missouri that public officials shall receive compensation for the service rendered only when such compensation is expressly authorized by statute. In this case the statute expressly authorizes the circuit court to fix the compensation for deputies (Section 57.250) but has not authorized fees to be paid to deputies for attending court in addition to their regular compensation, which, in this case, is a salary.

Likewise, the statute specifically authorizes the fee for attending court to be paid to the sheriff (Section 57.280) but has not authorized this fee to also be paid to the deputy. Therefore, it would appear as was held by the Supreme Court in the case of *Maxwell v. Andrew County*, 146 S.W.2d. 621, l.c. 625:

"The statutes regulating the compensation of sheriffs expressly provide for the payment of mileage in certain cases. For example, such provision is made when the officer is serving subpoenas or writs or transporting a prisoner to the penitentiary. The specification

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in the statute of instances when mileage
is to be paid and money lawfully be received
by the sheriff constitutes an implied pro-
hibition upon its collection in other instances.
* * * *"

CONCLUSION

It is, therefore, the conclusion of this office that since the statute does not specifically authorize payment of a \$3.00 per day fee to deputies for attending court in addition to their salary that such may not be done. The deputy may be compensated only by his regular salary and the \$3.00 per day fee for attending court authorized by Section 57.280, RSMo. 1949, is payable to the sheriff not to the deputy.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Fred L. Howard.

Yours very truly,

John M. Dalton
Attorney General

FLH:mw