

SHERIFF'S FEES: May only receive compensation for days actually attending court.

January 27, 1945



Honorable Clyde V. Hastings
Prosecuting Attorney
Grant City, Missouri

Dear Mr. Hastings:

Under date of January 19th, 1945, you wrote this office requesting an opinion as follows:

"It has been the custom in this county for the Sheriff to receive a fee of \$3.00 for each day any court of record is in session, this under Section 13,411 Revised Statutes, 1939.

"Under the New Civil Code, Section 9, page 359, Laws of Missouri, 1943, it is provided that the circuit court shall be in session at all times.

"It sounds to me like the Sheriff might be entitled to collect a \$3.00 fee for every day in the year except Sundays and perhaps holidays."

The portion of Section 13411, R. S. Mo. 1939, referred to in your letter reads as follows:

"Fees of sheriffs shall be allowed for their services as follows:

* * * * *

"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"

Section 9 of Committee Substitute for Senate Bill 34, Laws of Missouri, 1943, page 353, l. c. 359, is as follows:

"Every term of court shall commence and convene by operation of law at the time fixed by statute without any act, order, or formal opening by a judge, the judges, or other officials, and shall continue to be open at all times until and including the day preceding the next regular term on which day it shall expire by operation of law."

The language of Section 13411, supra, is "for attending each court of record," and Section 9 of Committee Substitute for Senate Bill 34, supra, requires the courts to remain open. This does not mean the courts shall be in session as the word "session" is generally understood with reference to courts, but only that terms may not be adjourned so that the judge may transact business at any time. In this connection it is desired to call attention to the interpretation of two fee statutes by the Federal courts:

"Rev. St. Sec. 829, 28 U. S. C. A., Sec. 574, which fixes the marshal's compensation for attending the Circuit or District Court while in session, means that the court is open by its own order for the transaction of business."

--McMullen v. United States, 13 S. Ct. 127, 146 U. S. 360, 36 L. Ed. 1007.

"The phrase 'in session,' within the meaning of a charge that accused used contemptuous words in the courtroom while the court was 'in session,' expresses not only the idea that at the time the judge was sitting on the bench and engaged in the discharge of official functions, but was also open

to the construction of meaning that the court had convened for a term and not adjourned."

--State v. Root, 67 N. W. 590,
595, 5 N. D. 487, 57 Am. St.
Rep. 568.

While these cases would not be binding upon courts of the State of Missouri, they would be highly persuasive.

In many circuits in this State it has been customary for the judge to hold each term open until time for the next term to convene. This created the same situation as is now produced by the new Code, and the sheriffs in these courts were allowed compensation for attending court on the days the court was in session and transacting business and not for days the court was in recess.

Conclusion

It is the opinion of the writer that a sheriff under the clause of Section 13411, quoted herein, would only be entitled to receive compensation for attending court for the days he actually attends upon which the court is open and transacting business or for days when he is attending by express order of the judge thereof although the court may not be transacting business.

Respectfully yours,

W. O. JACKSON
Assistant Attorney General

APPROVED:

HARRY H. KAY
(Acting) Attorney General

WOJ:EG