

SHERIFF: Sheriff of Franklin County can appoint a deputy approved by the judge of the circuit court and pay the deputy out of his own fees, but the county court cannot allow the deputy a salary.

March 8, 1939

Honorable Theodore P. Hukriede
Prosecuting Attorney
Franklin County
Union, Missouri

3-9
FILED
43

Dear Sir:

This is to acknowledge your letter of March 6, 1939, requesting an opinion of this Department. Your letter reads as follows:

"The Sheriff of Franklin County desires an opinion as to whether or not the County Court can under the law allow and pay a salary for a deputy to take care of the work in the Sheriff's office.

"In this County there is a great deal of work, both civil and criminal, and it is practically impossible for the Sheriff himself to take care of his office duties and serve legal process."

The population of Franklin County according to the last Decennial Census of 1930, was 30,519. In view of that population the Sheriff of Franklin County does not come within the bracket which calls for a salary, but must depend upon fees solely. The fees under civil procedure are set out in Section 11789, R. S. Mo. 1929. The fees under criminal procedure are set out in Section 11791, R.S. Mo., 1929.

Section 11513, R. S. Mo. 1929, reads as follows:

"Any sheriff may appoint one or more deputies, with the approbation of the judge of the circuit court; and every such appointment, with the oath of office indorsed thereon, shall be filed in the office of the clerk of the circuit court of the county."

Section 11514, R. S. Mo., 1929, reads as follows:

"Every deputy sheriff shall possess all the powers and may perform any of the duties prescribed by law to be performed by the sheriff."

Under the two above sections, Sections 11513 and 11514, any sheriff may appoint one or more deputies to be approved by the judge of the circuit court and every deputy shall possess all the powers and perform the duties performed by the sheriff. Since the Sheriff of Franklin County is on a fee basis, so also must the deputy sheriff be paid out of fees collected by the Sheriff.

In the case of *Scott v. Endicott*, 38 S. W. (2d) 67, the court held:

"There can be no doubt that a deputy sheriff appointed by the sheriff as provided by Section 11513, R. S. Mo. 1929, is a public officer. State ex rel. Walker v. Buss, 135 Mo. 325, 36 S. W. 636, 33 L. R. A. 616. That being true, he is subject to the same general limitations as any other public officer in the matter of salary and fees. There is no provision in the law providing a salary for deputy sheriffs in counties such as Ozark County. * * *"

Under Section 11516, Revised Statutes of Missouri, 1929, in case of an emergency the sheriff may appoint deputy sheriffs without permission from the judge of the circuit court, and their salary shall be \$2.00 per day. This section reads as follows:

"Every sheriff shall be a conservator of the peace within his county, and shall cause all offenders against law, in his view, to enter into recognizance, with security, to keep the peace and to appear at the next term of the circuit court of the county, and to commit to jail in case of failure to give such recognizance. In any emergency the sheriff shall appoint sworn deputies, who shall be residents of the county, possessing all the qualifications of sheriff. Such deputies shall serve not exceeding thirty days, and shall possess all the powers and perform all the duties of deputy sheriffs, with like responsibilities, and for their services shall receive two dollars per day, to be paid out of the county treasury."

Under Section 11789, R. S. Mo. 1929, the fee of the deputy sheriff 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), shall be \$3.00 per day. Bearing in mind Section 11513, as above set out, this deputy who attends court must be approved by the judge of the circuit court. In view of the fact that Franklin County only has a population of 30,519, the Sheriff of this county is only allowed fees as set out in Sections 11789 and 11791, supra.

March 8, 1939

Conclusion.

In view of the above authorities it is the opinion of this Department that the Sheriff of Franklin County may appoint a deputy sheriff, who is to be approved by the judge of the circuit court but must be paid out of the fees allowed the sheriff in accordance with the holding of *Scott v. Endicott*, supra, and the county court cannot under the law allow and pay a salary for a deputy to take care of the work in the sheriff's office.

Respectfully submitted,

W. J. BURKE
Assistant Attorney-General

APPROVED:

(Acting) J. W. BUFFINGTON
Attorney-General

WJB:EG