IN RE:

Right of sheriff to practice law.

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March 24th,1933

Mr. Nat B. Rieger,
Prosecuting Attorney,
Adair County,
Kirksville, Missouri.

Dear Sir:-

I have your letter of March 22nd,1933 requesting an opinion upon the following facts:

> "I would appreciate an official opinion from your office as to whether a duly licensed and practicing attorney at law who has been elected Sheriff of a Missouri County is privileged to continue his practice of law, and if so the extent to which he would be disqualified as sheriff when he is of counsel in a jury case."

The sheriff is an officer of the courts within his county, and should at all times be free of interest and prejudice in discharging the official business of any court. The position of the sheriff is so powerful that the framers of the Constitution prohibited him from succeeding himself, Article IX, section 10. It was the intent of the lawmakers that the sheriff should have no interest in any litigation in the courts within his county. Disqualification of the sheriff for either interest or prejudice is made easy by law, 11206, 1845, R. S. Mo. 1929.

It is the duty of the sheriff to attend each court held in his county, 1870 R. S. Mo. 1929, and for such services he is allowed certain fees, 11789, R. S. Mo. 1929. This duty of the sheriff to attend and remain in attendance upon the courts of his county except in case of illness and absence on account of official duties, is mandatory, and the failure to do so is neglect of duty for which the sheriff may be removed. State v. Yager 250 Mo. 388. In some instances the sheriff selects the jurors, 8775 R. S. Mo. 1929.

Whenever the sheriff is interested in any suit it is made the duty of the coroner to serve and execute all writs and precepts out of the sheriff's office, 11524, R. S. Mo. 1929.

In construing this statute disqualifying the sheriff for interest, the Kansas City Court of Appeals in State ex rel. v. Duncan 195 Mo. Ap. 541, l.c. 552, held that the ministerial act of serving process

could not be performed by the shdriff interested in the litigation, and said:

> "Our Statute, section 11218 R. S. 1909 provides that when the sheriff, whose duty it is to serve process is a party or is interested in the suit, related to or prejudiced against any party or is in any way disqualified, the coroner shall serve and execute all writ and processes and perform all the duties of the sheriff. So that even in the case of an ordinary civil action, involving no more than a mere civil liability for a limited sum of money, and where the regular process server is an official under heavy bond for the faithful performance of his duties, still the statute would not permit him to act in the case where he is plaintiff or is interested in the outcome of the suit. And the same is true at common law. According to Blackstone, it is the duty of the sheriff to execute all process issuing from the king's court of justice, and that 'when just exception can be taken to the sheriff for suspicion of partiality (as that he is interested in the suit, or of kindred to either plaintiff or defendant), the process must then be awarded to the coroner instead of the sheriff'."

Among other things, it is made the duty of the sheriff to serve executions and collect money thereon, all of which money shall be paid to the plaintiff or his order or his attorney of record. 11519 R. S. 1929. The intent of the lawmakers to be gathered from this statute is that the sheriff and the attorney for the person entitled to the money should be separate and distinct individuals, and that the office of sheriff and attorney of record should not be jointly occupied by one person. It therefore appears that the sheriff would be interested within the meaning of the statute whenever he holds himself out as attorney to engage in any particular class of litigation. If the sheriff is to engage in the practice of law in divorce cases exclusively he is thereby interested in all divorce cases filed or tried in his county, and is therefore disqualified from performing any of the duties of sheriff in that particular class of cases. It goes without argument that the sheriff is disqualified from defending defendants in criminal cases, yet by the same law it is made the duty of the sheriff to serve all process and writs in both criminal and civil cases. The practice of law therefore, either direct or indirectly, by the sheriff in any particular class of cases, at once disqualifies him from acting as sheriff in that particular class of cases.

It is the further opinion of this office that the practice of law by the sheriff within his county is contrary to public policy. In advancing this opinion, we are not unmindful of the fact that the term public policy has no fixed meaning, but should be applied to each particular set of facts, and the reason for this is pointed out in Lipscomb v. Adams 193 Mo. 530, l.c. 542, in the following language:

> "To limit the term 'public policy' within the bounds of a fixed definition would be to render evasion of the law in that respect a matter of easy invention."

In Tallman v. Woodworth, 2 Johns. 385, the court of New York condemned the practice of a public officer serving processes in the following language:

> "The practice of a constable who acts as such officer in the cause, to appear also as attorney for either party, is certainly not to be approved of, since it may lead to great abuse."

It is further the opinion of this office that a Missouri sheriff in his county, cannot directly or indirectly engage in the practice of law without disqualifying himself as sheriff, for the reason (1) that such practice would be in conflict with official duty and (2) is contrary to public policy.

Respectfully submitted.

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

FER/mh