

SALARIES: Sheriffs not entitled to fee for arrests made by  
FEES: highway patrol; may collect fee for trial or con-  
SHERIFFS: fession, but must turn same into revenue fund.

*C. J. Smith*

August 13, 1947

FILED  
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*8/26*

Honorable Cline C. Herren  
Judge and Ex-Officio Magistrate  
Webster County  
Marshfield, Missouri

Dear Judge:

This is in reply to your letter of recent date wherein you submit the following statement of facts and request an official opinion thereon:

"It has been the practice of most Magistrate Courts to charge a warrant fee of \$1.00 and a plea or confession fee of \$1.00 on behalf of the Sheriff's office in cases brought in by the Highway Patrol for traffic violations and P.S.C. violations whether or not the Sheriff has anything to do with the case.

"Section 8357 (1943) and Senate Bill 19 recently passed provide, among other things, that 'no fee shall be allowed to any person or officer for the arrest and transportation of persons arrested and transported by members of the Patrol.'

"In view of the above section and amended by Senate Bill 19, should not this practice of collecting Sheriff's fees be abandoned?"

In order for an officer to be entitled to compensation, he must point to the statute authorizing such compensation.

Section 13413, R. S. Mo. 1939, which relates to fees of sheriffs, contains the following provisions:

"Sheriffs, county marshals or other officers shall be allowed fees for their services in criminal cases and for all proceedings for contempt or attachment as follows:

For serving and returning each capias,  
for each defendant. . . . . \$1.00

For every trial in a criminal case or confession. . . . . \$1.00"

It appears by the provisions of Section 8357 of Senate Bill No. 19, passed by the 64th General Assembly, that the lawmakers did not intend for the sheriff to collect or retain the fees for arresting and transporting persons who have been arrested by the highway patrol. The portion of this section applicable to this question reads as follows:

"\* \* \* No fee shall be allowed to any person or officer for the arrest and transportation of persons arrested and transported by members of the patrol, and no witness fees shall be granted or allowed members of the patrol in criminal cases. \* \* \*"

The salary and fees allowable to sheriffs in counties of the fourth class is provided for in Laws of Missouri 1945, page 1547. Section 3 of this Act, page 1548, which relates to the duties of the sheriff with respect to collecting and reporting fees, provides in part as follows:

"It shall be the duty of the sheriff in counties of the fourth class to charge and collect in all instances every fee, both civil and criminal, including mileage, accruing to his office by law, except such criminal fees as are chargeable to the county, and such sheriff shall, at the end of each month, file with the county court a report of all fees charged and collected during said month, stating for what act or service said fees were charged and collected, together with the names of the state or counties on charge of venue cases or persons paying or who or which are liable for same, which report shall be verified by the affidavit of such sheriff. \* \* \*"

It would appear from this section and said Section 13413, supra, that in criminal cases in which the defendant is liable for the costs it would be the duty of the sheriff to collect the fee for a plea or confession and to report it and pay it into the county treasurer. However, the fees which are chargeable for arrests and transportations of persons in criminal cases in which such arrests and transportations have been made by the highway patrol should not be collected, reported and

remitted by the sheriff, because under said Senate Bill No. 19, no such fees are allowed to any person or officer for such services when they are made by the highway patrol.

#### CONCLUSION

It is, therefore, the opinion of this department that the fee for a plea or confession in cases brought by the highway patrol for traffic violations and Public Service Commission violations should not be collected and paid to the sheriffs in cases in which the county is liable for the costs. However, if they are cases in which the defendant pays the costs, then the fee should be collected and paid to the sheriff if he or his deputy made the arrest, and he should report and remit it to the county treasurer. It is further the opinion of this department that the fee for serving a warrant or transporting a person arrested, if such service is performed by the highway patrol, should not be collected and paid to the sheriff.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

TWB:VLM