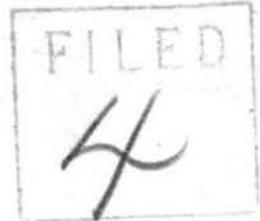


SHERRIFFS: Several questions regarding salaries of
sheriffs in counties of the second class.



March 15 1, 1948

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Honorable Ralph Baird
Prosecuting Attorney
Jasper County
Joplin, Missouri

Dear Sir:

This is in reply to your request for an opinion relative to the salaries and fees of sheriffs in counties of the second class.

As there are several questions embodied in your request we will take them up one by one.

(1) The magistrate in the eastern district of Jasper County usually sits at Carthage but holds court about one day in each week at Webb City. The sheriff reports daily to the magistrate courtroom at Webb City before continuing on to the courthouse at Carthage. Your question is whether or not the sheriff is entitled to mileage for this trip. In answer to this I refer you to the provisions of House Bill No. 939 enacted by the 63rd General Assembly, Laws of Missouri, 1945, page 1572, Section 7, which reads, in part, as follows:

"The sheriff and his deputies shall be reimbursed out of the county treasury, at the rate of five cents per mile for each mile actually and necessarily traveled, in this state, in the performance of their official duties. When mileage is allowed, it shall be computed from the place where court is usually held, and when court is usually held at one or more places, such mileage shall be computed from the place from which the sheriff or deputy sheriff travels in performing any service. * * * * The county court shall examine every claim filed for reimbursement, and if found correct, the

county shall pay to the officer entitled thereto, the amount found due as mileage." (Underscoring ours.)

Under the provisions of the above section it is our opinion that the sheriff is not entitled to mileage reimbursement for traveling from his home to the courtroom at Webb City. It should be pointed out that the travel of the sheriff must actually and necessarily be in the performance of his official duties, and it is the duty of the county court, under the above statute, to examine the claims for reimbursement and to pay them if they are found to be correct. We believe that this would be a question of fact to be determined by the county court.

(2) The county has employed certain deputy sheriffs and assigned them to various courts in the county. You ask if the sheriff is entitled to the \$3.00 per diem for the attendance of the deputy sheriffs upon these courts. If the county court has assigned these deputies to the various courts, we believe that it may be fairly assumed that their attendance has been directed by the court desiring their attendance. Section 2034, R.S. Mo. 1939, as amended, now reads:

"The several sheriffs shall attend each court held in their counties, when so directed by the court; and it shall be the duty of the officer attending any court to furnish stationery, fuel, and other things necessary for the use of the court whenever ordered by the court."

Section 13411, R.S. Mo. 1939, providing for fees of sheriffs, reads, in part, 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 day3.00."

In an opinion rendered by this department to Honorable Ralph H. Duggins, Prosecuting Attorney of Saline County, under date of January 22, 1948, a copy of which I am enclosing, it provides, in the main, that the fee is properly allowed to the sheriff and not to the deputy for the deputy's attendance upon courts of record. Therefore, we believe that even though the

deputies are on a straight salary basis the sheriff is entitled to the fee for the deputy's attendance upon courts which have directed their attendance. However, the sheriff would not be entitled to the per diem for his own personal attendance unless his attendance had been directed by the court.

(3) Is the sheriff allowed to retain the fees paid for attendance upon the magistrate courts above and beyond the \$3900.00 allowed for his work in civil matters? We fail to see that there should be any distinction made in the fees collected for his attendance upon magistrate courts so as to, in fact, increase his salary considerably more than House Bill No. 939, Laws of 1945, apparently contemplated. It is a general rule of law that before an officer has authority to charge fees for his services he must be able to point to a statute authorizing such charge. *Nodaway County v. Kidder*, 129 S.W. (2d) 857. We are unable to find any statute providing that these fees should be any different than the other civil fees collected by the sheriff so that his whole compensation, in fact, should not be more than \$7800.00.

(4) You ask if the opinion under date of January 3, 1947 (Wilson), rendered to Honorable John A. Eversole, Prosecuting Attorney of Washington County, is applicable to a county of the second class. We believe that this opinion is applicable to counties of the second class as there is nothing in the facts, as outlined by your letter, which is essentially different as to make out a different case for second class counties.

(5) We further believe that the opinion under date of August 26, 1946, rendered to Honorable Gordon R. Boyer, Prosecuting Attorney of Barton County, is applicable to counties of the second class as the county court is not a court of record in second class counties.

Respectfully submitted,

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. Assistant Attorney General

APPROVED:

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Attorney General

JRB:ml
Encs.