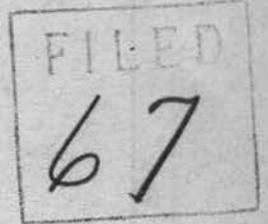


SHERIFFS: Sheriff in county of second class may: (1) retain compensation for official services in civil matters not to exceed a yearly sum of \$3900.00; (2) sheriff in second class county may not retain monthly a sum in excess of one-twelfth of \$3900.00; (3) except said sheriff may retain during last month of his official year a sufficient amount as will cause his compensation for the official year to reach the amount of \$3900.00.

December 7, 1948



Mr. William B. Norris, Jr.  
Assistant Prosecuting Attorney  
Buchanan County  
St. Joseph, Missouri

12-9

Dear Sir:

Your opinion request of recent date reads as follows:

"Section 4 of H. B. 939 63rd. General Assembly which was approved April 11, 1946 (laws of Missouri, 1945 Page 1571) provides in part: 'It also shall be the duty of the sheriff to charge, collect and receive, on behalf of the county, every fee, penalty, charge, commission and other money that shall accrue to him or his office for official services rendered in civil matters, by virtue of any statute of this state, and all such fees, penalties, charges, commissions, and other money collected by him, shall at the end of each month be paid by him to the county treasurer, as hereafter provided, less that amount which he is hereinafter authorized to retain.'

"The Sheriff of Buchanan County Missouri has asked me to request your opinion whether he should pay to the County Treasurer the reasonable compensation allowed him by the County Court in accordance with the provisions of Section 11598 R. S. of Missouri 1939 for delivering the ballots to the judges of the election held November 2, 1948, or whether he may retain said compensation in addition to the maximum sum of \$3900 allowed him each year for his official services in civil matters.

"I would appreciate receiving your opinion regarding this matter at your earliest convenience."

Section 11598, R. S. Mo. 1939, provides that the delivery of the ballots in an election shall be made by the sheriff of the county, his deputy, or constable of the township, who shall be allowed a reasonable compensation for his services to be provided for by the county court. This activity by the sheriff is obviously a statutory duty. In 1945 the 63rd General Assembly passed Article 13, Chapter 99, Mo. R.S.A., (Laws of Missouri 1945, pp. 1570-1572) and several sections thereunder relating to compensation of sheriffs in regard to civil matters in counties of the second class. As you state, Buchanan County falls into the category of being a county of the second class. In the Missouri Revised Statutes Annotated, Volume 24, page 133, is found Section 13547.204, which reads, in part, as follows:

"It also shall be the duty of the sheriff to charge, collect and receive, on behalf of the county, every fee, penalty, charge, commission and other money that shall accrue to him or his office for official services rendered in civil matters, by virtue of any statute of this state, and all such fees, penalties, charges, commissions, and other money collected by him, shall at the end of each month be paid by him to the county treasurer, as hereafter provided, less that amount which he is hereinafter authorized to retain. \* \* \* \*"  
(Underscoring ours.)

For the purposes of this opinion, we are assuming that the delivery of the ballots by the sheriff is a civil matter, and is made mandatory by virtue of a statute of this state. Section 13547.205, page 133, Mo. R.S.A., Volume 24, is the only statute providing for the withholding of any moneys by a sheriff in said Article 13. As seen above, Section 13547.204 authorizes the sheriff to retain certain amounts. This authorization is exclusive, and unless the provision for payment found in Section 11598, R.S. Mo. 1939, is specifically provided for in Article 13, supra, or falls within the provisions of Section 13547.205, no retention of said moneys can be made. In Section 13547.205 it is provided:

"In counties of the second class, the sheriff is hereby authorized to withhold and retain, as compensation for his official services in civil matters,

from the fees, penalties, charges, commissions and other money collected by him for his services in such matters, the sum of \$3900.00 for each year of his official term. \* \* \* \*"

This portion of the above referred to statute authorizes the sheriff in a county of the second class to accumulate and retain for his official services in civil matters the sum of \$3900.00 for each year of his official term. Said section further provides the method or basis of retention of moneys received by the sheriff, and reads as follows:

"\* \* \* He shall not retain, during any one month, except the last month of each year of his official term, a sum exceeding one-twelfth of the aforesaid \$3900.00, and any amount collected and received in excess of said one-twelfth during any such month, shall be paid by him at the end thereof to the county treasurer. \* \* \*"

Under that portion of the statute, we see that the monthly amount retained by a sheriff for his official services in civil matters cannot be in excess of one-twelfth of \$3900.00 during any month of his official term.

The only exception to this provision is found in the remaining portion of Section 13547.205, supra, wherein it provides a method of retention as to an amount in excess of one-twelfth of \$3900.00 where his pay for official services throughout the year would fail to reach the sum of \$3900.00 without the retention during the last month of his official year of a sum in excess of one-twelfth of \$3900.00. Said remaining portion of Section 13547.205 reads as follows:

"\* \* \* He may, during the last month of any year of his official term, withhold from the amount collected and received by him for services in civil matters during such month, a sufficient amount as will cause his compensation for the official year to reach the sum of \$3900.00. If at the end of any year of his official term, he has not collected and retained the sum of \$3900.00, he may withhold and retain a sufficient amount, from moneys collected

by him in civil matters in the succeeding year of his official term, to cause his compensation for the official year for which he has not received his full compensation, to amount to \$3900.00."

Therefore, we see that whether or not the Sheriff of Buchanan County is authorized to retain the compensation awarded him for the discharge of the duties provided for in Section 11598, supra, is dependent upon whether or not said sheriff has collected moneys aggregating \$3900.00, or whether or not the sum he will collect in his last month of his official year will fail to amount to \$3900.00 without the retention of the "reasonable compensation" provided for in Section 11598, supra. In no event is the sum provided for in Section 11598, supra, a sum over and above and exclusive to the provisions of Section 13547.205, supra.

#### CONCLUSION

It is, therefore, the opinion of this department that a sheriff in a county of the second class may: (1) Retain compensation for his official services in civil matters not to exceed a yearly sum of \$3900.00; (2) that a sheriff in a county of the second class may not retain monthly for rendering official services in civil matters a sum in excess of one-twelfth of \$3900.00; (3) except said sheriff of a county of the second class may retain during the last month of his official year for official services in civil matters a sufficient amount as will cause his compensation for the official year to reach the sum of \$3900.00.

Respectfully submitted,

WILLIAM C. BLAIR  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General *J.E.T.*