

COUNTY COURT: The Sheriff of Lawrence County not entitled to  
SHERIFF: receive any of the official salary budgeted by  
the County Court for compensation of a jailer  
appointed by Sheriff and later discharged by him.  
Sheriff's compensation not increased or diminished  
during the term of office for which he was elected.

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May 2, 1944

Hon. Eldred Seneker  
Prosecuting Attorney  
Lawrence County  
Mt. Vernon, Missouri

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Dear Mr. Seneker:

We acknowledge receipt of your letter dated April 25th,  
1944, which, omitting caption, reads as follows:

"The County Court of Lawrence County,  
in preparing the 1944 budget set out  
\$75.00 per month to be paid for jailer.

"Sec. 9193 Revised Statutes 1939 provides  
for the keeping and maintaining of a jail  
in each county.

"Sec. 9195 Revised Statutes 1939 vests in  
the Sheriff the right to appoint a jailer  
but makes no provision for the pay of a  
jailer. This section also provides that  
the sheriff shall have the custody, rule,  
keeping and charge of the jail.

"Due to the fact that the business of  
the sheriff has fallen off he has dis-  
chargee the jailer and is now acting as  
jailer himself.

"The Court expresses themselves as desir-  
ing to pay to the sheriff the amount so  
budgeted for jailer.

"In view of the fact that business in the  
sheriff's office has fallen off I person-  
ally feel that he should be entitled to  
the amount.

"I am reliably informed that several counties are now allowing the sheriff the amount budgeted for jailer.

"Please advise if the court court can pay this amount to the sheriff."

Section 9195, R. S. Mo. 1939, places upon the sheriff the duty of keeping and managing the county jail and authorizes him to appoint a jailer if he so desires. That section is as follows:

"The sheriff of each county in this state shall have the custody, rule, keeping and charge of the jail within his county, and of all the prisoners in such jail, and may appoint a jailer under him, for whose conduct he shall be responsible; but no justice of the peace shall act as jailer, or keeper of any jail, during the time he shall act as such justice."

Section 9210, R. S. Mo. 1939, authorizes the appointment of a deputy jailer when it has been determined that the county jail is insufficient to secure the prisoners therein confined, and limits the maximum compensation of such deputy jailer to \$150 per year. Obviously this statute does not apply to your question.

An investigation of the statutes of Missouri discloses no provision for a salary to be paid the sheriff for acting as jailer. The services of an officer are presumed to be gratuitous unless compensation therefor is provided by statute. An officer who claims compensation for the discharge of official duties must show a statute authorizing such compensation before he can be paid. *Nodaway Co. v. Kidder*, 129 S. W. (2d) 857, 344 Mo. 795, and *Maxwell v. Andrew Co.* 146 S. W. (2d) 621, 347 Mo. 156.

In *Nodaway County v. Kidder*, supra, the following was held:

"(5) The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compen-

sation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. (State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist. 218 Mo. App. 490, 493, 279 S. W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656.)

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. (State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 645.)

"(6) The duties performed by appellant, and for which the additional fee or salary and mileage, was paid, were with reference to matters pertaining to and relating to his official duties as presiding judge of the county court and said services were within the scope of said official duties. The work in which appellant was engaged was directly under the supervision of the county court. Public policy requires that a public officer be denied additional compensation for performing official duties."

In holding that a sheriff was not entitled to receive an allowance from the county court for preserving the public peace our Supreme Court, in Maxwell v. Andrew County, 347 Mo. l. c. 165, used the following language:

"It may be argued that such a construction of the statutes would place an undue hardship upon law enforcement officers. That

the enforcement of the criminal law by the locally elected sheriff is a vital public concern is obvious. But if a hardship to the law enforcement officers is involved this is a matter for the consideration of the Legislature and not the courts. He who accepts public office takes it cum onere. We are constrained to hold therefore that the payments made to the sheriff in this case were illegally made. In *Nodaway County v. Kidder, supra*, we held that under similar circumstances an officer who had received compensation not specifically allowed by statute might be required to repay the same to the county in an action for money had and received. A declaratory judgment of nonliability was therefore improper."

## CONCLUSION

It is, therefore, the opinion of this department that the County Court of Lawrence County, Missouri, may not allow the sheriff a salary for discharging the duties of county jailer.

Respectfully submitted,

EDGAR B. WOOLFOLK  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK  
Attorney General

EBW:CP