

2 P Smith

SHERIFFS: Sheriffs and deputy sheriffs not allowed
DEPUTY SHERIFFS: witness fees in criminal cases, unless
WITNESS FEES: they reside five miles or more from
place of trial; not allowed witness fees
in court upon which they attend.

October 27, 1945

FILED

83

Honorable J. P. Smith
Prosecuting Attorney
Webster County
Marshfield, Missouri

Dear Sir:

Receipt is acknowledged of your letter dated October 18, 1945, in which you requested an official opinion of this office and which reads as follows:

"I kindly ask you to give me an opinion as to Sheriff, or his Deputy charging fees when they are used as Witnesses in Criminal Cases, in Courts that they are waiting on as officer?"

Attention is invited to Section 4232, R.S. Mo. 1939, which reads as follows:

"No officer, appointee or employee holding a state, county, township or municipal office, including police officers and policemen, either by election or appointment, shall claim, be allowed or receive any fee or compensation as a witness for testifying before a coroner's inquest, grand jury, or in any criminal cases. All officers, appointees and employees as aforesaid, shall be compelled to attend the trial of all criminal cases, coroner's inquests and grand juries, when legally subpoenaed: Provided, that the provisions of this section shall not apply to any officer who is a witness in any case

where the residence of such officer is five miles from the place where the trial or coroner's inquest is held, or where the grand jury is in session."

The sheriff and the deputy sheriff are officers and fall within the class designated in the above quoted section. The sheriff is an elective officer of the county, and the deputy sheriff is an appointive officer of the county, appointment being made by the sheriff.

The wording of the statute is clear and concise in stating that no such officers shall be allowed witness fees for testifying in criminal cases.

There is an exception in Section 4232, supra, which allows an officer witness fees for testifying in criminal cases where the officer's residence is five miles or more from the place where the trial is to be held. Consequently, a sheriff or deputy sheriff whose residence is five miles or more from the place where the trial is held, and who is subpoenaed as a witness, is entitled to receive witness fees, as provided in Section 13420, R.S. Mo. 1939.

The following quotation defining the word "residence" is taken from Volume 54 C. J., page 706:

"'Residence' is a noun, the name of a place or thing, and has been defined as an abode, dwelling, habitation, or place where one actually lives; a dwelling house where a person lives in settled abode; the dwelling place of a person; * * * *"

I do not believe that it was intended that sheriffs and deputy sheriffs receive witness fees for testifying in courts upon which they are attending in fulfilling their duties as provided by law, though they reside five miles from where the court is being held.

The basis for allowing witnesses' fees is to compensate them for any inconvenience suffered incident to attending court, but a sheriff or deputy sheriff attending upon a court because it is his duty as provided by law is not inconvenienced by being there, though he may live five miles or more from the court. Consequently, under such circumstances no fees could be allowed.

October 27, 1945

The sheriff or his deputy can only be allowed witness fees in criminal cases when the court is five miles or more from their residence and is not the court upon which they are required by law to attend.

Conclusion.

Therefore, it is the opinion of this office that sheriffs and deputy sheriffs are not allowed witness fees for testifying in criminal cases, unless their residence is five miles or more from the place where the trial is held. The sheriff or deputy sheriff should never be allowed witness fees for testifying in criminal cases in a court upon which they attend as required by law, though their residence is five miles or more from the court.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

RFT:ml

APPROVED:

J. E. TAYLOR
Attorney General