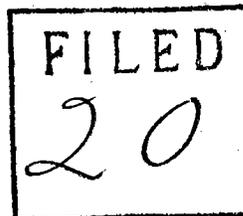


SHERIFFS: Reports required to be made in third class counties.



May 24, 1946

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Honorable Marshall Craig  
Prosecuting Attorney  
Mississippi County  
Charleston, Missouri

Dear Sir:

We hereby acknowledge receipt of your letter of recent date, requesting an opinion of this department, reading as follows:

"The opinion of your department is desired in connection with the question as to just what reports are required to be made by the Sheriff of a County where the population, as shown by the last census, is between 20,000 and 25,000. Should a monthly report be made for board of prisoners and also for all fees, both civil and criminal? In addition should a quarterly report be made to the County Court?"

It is well settled that the collection of fees by a public official must have a statutory basis. Sections 13411 and 13414, R. S. Mo. 1939, provide for the fees that a sheriff is entitled to, both civil and criminal. Section 13416, R. S. Mo. 1939, provides for the amount of compensation that he shall be allowed for boarding prisoners. These sections do not provide for any reports to be made by him to the county court.

Section 13444, R. S. Mo. 1939, provides for the manner in which a sheriff must keep an account of all fees collected by him. He must then account quarterly to the county court for all fees he has received as provided by Section 13450, R. S. Mo. 1939, which reads, in part, as follows:

"\* \* \* After the first day of January, 1891, every such officer shall make return quarterly to the county court of all fees by him

received, and of the salaries by him actually paid to his deputies or assistants, stating the same in detail and verifying the same by his affidavit; and for any statement or omission in such return contrary to truth, such officer shall be liable to the penalties of willful and corrupt perjury."

Therefore, it can readily be seen from a reading of the above statutes that the only report that is required of the sheriff to be made to the county court for the collection of fees is a quarterly one.

Section 13774, R. S. No. 1939, provides for the manner in which a sheriff may report the boarding of prisoners to the county court, and reads, in part, as follows:

"Hereafter when any person or persons shall be confined in the common jail for any criminal offense, the sheriff or jailer may make out and present to the county court at its regular session, a bill for all board due him for the board of such prisoners; \* \* \* \* \*"

The verb "may" may be, and usually is, employed as implying permissive and not mandatory action or conduct. *State v. The Kan. & St. Joseph RR. Co.*, 51 Mo. 532. Therefore, the above statute does not make any report for the boarding of prisoners mandatory, but if the sheriff so desires he may make his report at the regular session of the county court. If he does not make any such report, then the county court can require him to do so under Section 13839, R. S. No. 1939, which provides as follows:

"It shall be the duty of all courts of record, at each term thereof, to settle with the sheriffs or marshals for all moneys by them received; or which they ought to have collected, for the use of their respective counties, and have not before accounted for. They shall cause their clerks to make out a list of all sums chargeable to said sheriffs or

marshals and payable to the counties, specifying on what account, and cause the same to be certified under the seal of the court, which certificate shall be immediately transmitted to the clerks of the county courts of the counties to which such moneys are payable who shall charge the same accordingly."

The county courts were created by Article VI of the Constitution of Missouri, 1875. They are courts of record and would come within the above statute. Article VI, Sec. 36, Constitution of Missouri, 1875, provides:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

Section 13839, supra, requires the report at each "term." The terms of the county court are provided for in Section 2485, R. S. Mo. 1939, which reads as follows:

"Four terms of the county court shall be held in each county annually, at the place of holding courts therein, commencing on the first Mondays in February, May, August and November. The county courts may alter the times for holding their stated terms, giving notice thereof in such manner as to them shall seem expedient: Provided, that in counties now containing or that may hereafter contain seventy-five thousand or more inhabitants, and where county courts are now or may hereafter be held at more places than one and at other places than the county seat, the terms of said court shall be held monthly and alternately at the county

seat and such other place as may be provided for the holding of such court, and each monthly term shall commence on the first Monday in each month."

By reading the above sections of the Statutes, and the one section of the Constitution, together, we are of the opinion that the sheriff may make a report at each regular session, but if he does not he is required to make one at each term of the county court. It should be noted here that if the sheriff does make a report at each regular session he is required, under Section 13839, supra, to account only for that which he has not before accounted.

It is interesting to note that House Bill No. 899, passed by the 63rd General Assembly and approved by the Governor, provides for monthly reports by the sheriff to the county court of all fees, both civil and criminal, and a monthly report for the boarding of prisoners. This bill was approved by the Governor on April 19, 1946, but does not become effective before July 1, 1946.

The sheriff has a further report to make in connection with partition sales, as provided by Section 1753, R. S. Mo. 1939, but this is not a regular report, nor is it one to be made to the county court.

#### Conclusion

Therefore, it is the opinion of this department that a sheriff, of a county whose total population by the last census is between 20,000 and 25,000, (1) is required to make a report of all fees, both civil and criminal, quarterly to the county court, and, (2) is required to make a report at each term of the county court for the boarding of prisoners, if he has not before accounted for same.

Respectfully submitted,

APPROVED:

PERSHING WILSON  
Assistant Attorney General

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J. E. TAYLOR  
Attorney General

PW:CP