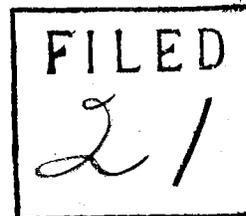


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SHERIFF'S FEES: Fees earned by sheriff before July 1, 1946 that do not exceed the statutory limitation of \$5,000 for a period of one year may be retained by him.

September 14, 1946



r. Herbert M. Danielson  
Clerk of the Circuit Court  
Livingston County  
Chillicothe, Missouri

Dear Sir:

This department is in receipt of your request for an opinion, based on the following facts:

"I am in doubt as to how sheriff's fees should be paid now. Should fees earned prior to July 1, 1946 be paid by separate check so that the sheriff may keep them and those earned after July 1 be turned over to the county or do all fees go to the county regardless of when earned? Fees on many cases are paid long after they are taxed as costs."

The question, as I understand it, is whether or not the sheriff is entitled to fees earned before July 1, 1946, and collected thereafter.

Section 13450, R.S. No. 1939, limits the amount of fees a sheriff may retain for any one year, and is as follows:

"The fees of no executive or ministerial officer of any county, exclusive of the salaries actually paid to his necessary deputies, shall exceed the sum of five thousand dollars for any one year. The foregoing clause shall not apply to any county or city not within a county in this state now containing or which may hereafter contain one hundred thousand inhabitants or more. 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."

In the case of J. Fred. Thornton, clerk, v. Emile Thomas, sheriff, 2 Mo. App. 595 (a memorandum of the case is only reported, the full decision is not reported), it is stated:

"1. The clerk of the Circuit Court, to whom fees are taxed in any case, is the only person entitled by law to receive them from the party chargeable, or from the sheriff, who has collected them on fee-bill or execution.

"2. When fees are collected, they will be held by the clerk, to his own use, or paid into the county treasury, according to the determination of the inquiry whether he has retained to his own use from other fees, earned in the same year, the maximum sum allowed him by law for any one year.

"3. The incumbent clerk has no right to fees earned by, or taxed to, his predecessor; they belong either to the latter or to the county, and the incumbent is not a trustee for the county, and has no power to administer this fund. J. Fred. Thornton, clerk, v. Emile Thomas, sheriff. Opinion by Gantt, P. J."

In a later case, Corbin v. Adair County, 171 Mo. 335, the Supreme Court of Missouri decided a question similar to the one asked in your request for an opinion. In the Corbin case the termination of the office was by separating the office of recorder and circuit clerk, which previously had been administered by one officer. The question being the proper disposition of fees earned before the separation. The present question is similar because it deals with the payment of fees earned by the

sheriff before a different method of compensating him for his services was established. The court, in the Corbin case, said at l.c. 388, 389, 390:

"From April 19, 1898, to December 31, 1898, plaintiff as circuit clerk collected clerk's fees amounting to \$795.31, of which amount he voluntarily paid into the treasury of the county \$461.71, the amount of circuit clerk fees earned by him, but not collected prior to the division of the offices. The remainder, \$333.60, were fees earned and collected by him after the division. During the time from April 19th to December 31, 1898, he was earning enough to pay his salary, but had not collected it. He was of the opinion that he could not appropriate any of his old clerk's fees earned by him prior to the separation, and of his own accord paid what ever of those old fees he collected into the treasury.

"He made out his quarterly statements as required by the Act of 1891 (Laws 1891, page 152), and the county court approved the same, and he paid over the balance. He now seeks by this suit to recover enough to give him his salary of \$1,600. He charges fraud and mistake of fact, but the circuit court found, and his own evidence as well as that of the county judges clearly shows, that there was no mistake of fact. All of his quarterly settlements were correct, and there was no demand on him to turn over the old fees he had earned and collected. No misrepresentation or fraud was practiced on him to induce him to do so. These charges fell to the ground, and the circuit court could not have found otherwise than he did upon the proofs tendered.

"It was further developed that the position in which plaintiff found himself was the result solely of a mistake he made as to the law. His settlements were made with a perfect knowledge of all the facts and are

binding alike on him and the county unless they can be impeached for fraud, collusion or mistake. (State ex rel. v. Ewing, 116 Mo. 129; State ex rel. v. Shipman, 125 Mo. 436; Callaway Co. v. Henderson, 139 Mo. loc. cit. 520; Scott Co. v. Leftwich, 145 Mo. 26.)

"The testimony of plaintiff further discloses that a large amount of fees are due him as circuit clerk, of which at least \$1,200 are collectible and when collected by the sheriff or his successor they will belong to him until he has received the amount of the salary earned by him for the year 1898, not to exceed \$1,600. (Allen v. Cowan, 96 Mo. 193.) So that it is apparent that the plaintiff is not remediless. To the amount of the difference between the fees collected by him which he had earned in 1898 and retained, and the amount earned and not collected for that year, not exceeding \$1,600, he can demand and recover the uncollected fees from his successor, and his own evidence shows they will be more than sufficient. \* \* \* \*"

The statutory maximum of \$5,000 for one year would as a matter of course limit the retention of fees for the period in 1946 prior to July 1, to an amount not to exceed \$2,500.

#### Conclusion.

It is therefore the opinion of this department that the sheriff of Livingston County may retain any and all fees earned by him prior to July 1, 1946 which do not exceed the maximum of \$5,000 for the years prior to 1946 and \$2,500 for the period of January 1, 1946 to July 1, 1946. In the event those fees have been collected by the circuit clerk, he should pay them direct to the sheriff entitled thereto. The sheriff must, of course, report these fees to the county in the regular way,

Mr. Herbert E. Danielson

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and in the event they exceed the statutory maximum for the period during which they were earned, he must pay them into the county treasury.

Respectfully submitted,

W. BRADY DUNCAN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

WBD:ml