

SHERIFFS: Sheriffs of third class counties may appoint deputies
ELECTIONS: to assist him in election duties. Such deputies must
look to Sheriff for their compensation.

Filed: No. 64

March 24, 1949

Honorable J. P. Morgan
Prosecuting Attorney
Livingston County
Chillicothe, Missouri



Dear Sir:

Your opinion request of March 19, 1949, reads, in part, as follows:

"I have your letter of March 16, 1949, enclosing copy of opinion dated August 26, 1947, addressed to Hon. James L. Paul, Prosecuting Attorney, McDonald County. In that opinion the writer (Hon. David Donnelly) states (P3) "When the sheriff acts in said capacity his duties have no connection with his duties in criminal matters, but are entirely a civil matter."

"The only provision I find for the appointment of deputy sheriffs in Third Class Counties is Section 13547.302 Mo. R.S.A., Laws 1945, page 1562. This section requires a finding by the Judge that the appointment of the deputy is 'necessary for the prompt and proper discharge of his duties relative to the enforcement of the criminal law of this state.' Under your ruling could the Judge approve the appointment under the last cited section, or could the sheriff appoint election deputies without the Judge's approval?"

"Again quoting from Mr. Donnelly's opinion (P3) 'Said fee should be treated as an election expense in the same manner as when constables were in existence.' This indicates payment should be made by the townships. Section 13547.307 Mo. R. S. A., Laws 1945, page 1563 provides 'All salaries provided in this act shall

Hon. J. P. Morgan

be paid out of the county treasury.' Who would pay these election deputies and on whose order?

"Livingston County has approximately 25 voting places for our township elections. In view of Section 11494 Mo. R. S. A. would it not be necessary to have a deputy sheriff at each voting place?"

In the opinion to which you refer in your request, dated August 26, 1947, and addressed to the Honorable James L. Paul, Prosecuting Attorney of McDonald County, Missouri, it was held that the sheriff of a fourth class county is the proper officer to perform the duties relative to elections as were formerly enjoined by law on constables. It was also held that the fees collected by the sheriff in the discharge of such duties may be retained by him, such fees having accrued to his office in purely civil matters. It was further held in this opinion that these same fees are to be treated as an election expense in the same manner as when constables were in existence.

Section 1 of House Bill 362, Laws Mo. 1945, page 1079, provides that "whenever the word 'constable' appears in any statute except insofar as any such statute applies to the City of St. Louis and to counties of the first class, the same shall hereafter be deemed to refer exclusively to and to mean 'sheriff'." This section is therefore applicable to counties of the third as well as counties of the fourth class. Likewise, Section 3 of H.B. 899, Laws Mo. 1945, page 1562, provides that sheriffs of third class counties "shall retain all fees collected by him in civil matters," which provision is identical to that contained in the statute applicable to sheriffs of fourth class counties. Therefore the opinion in question is applicable to third class counties as well as those of the fourth class.

Three questions remain to be answered; is it necessary to have a deputy sheriff at each voting place, may additional deputy sheriffs be appointed to assist the sheriff in the discharge of his election duties, and what shall the compensation of such additional deputies be.

Section 11489, R. S. Mo. 1939, reads, in part, as follows:

"The sheriffs of their respective counties shall provide, at the expense of their counties, two ballot boxes for each precinct in each municipal township in said counties, and deposit the same with the constable of the proper township, whose duty it shall be to preserve the same, and have

Hon. J. P. Morgan

such boxes present at the proper time and place, at all elections in his township, for the use of the judges of the elections. * * *"

Section 11494, R. S. Mo. 1939, reads as follows:

"The constable shall attend the elections in his township, and perform such duties as are enjoined on him by law, under the direction of the judges."

Section 13399, Laws Mo. 1943, page 872, reads, in part, as follows:

"Constables shall be allowed fees for their services as follows:

* * * * *

"For each day or part thereof required in erecting the booths, taking them down, and attending any election in his township, when required to do so by the judges of election, per day - - - - - 3.00."

* * * * *

The substance of the duties imposed by these statutes is the supplying of the ballot boxes along with such other duties as the election judges may require, such as erecting and taking down booths. At the time when each township had a constable, he was required to attend the elections in his township and perform these duties. Section 11482, R. S. Mo. 1939, provides that the county court may divide townships into two or more election precincts. Therefore when the constable discharged his duties under Section 11494, supra, he may have had more than one voting place to attend. Now that the office of constable has been abolished and his election duties enjoined on the sheriff and his deputies, it follows that there need not be a deputy sheriff at each voting place but only such number of deputies as are needed to supply the ballot boxes to the voting places, and also erect, take down booths and perform such other duties as the election judges may require.

Should the sheriff find that he has an insufficient number of deputies to perform these election duties, the question arises as to whether he may appoint additional deputies to assist him.

Hon. J. P. Morgan

House Bill 899, Laws Mo. 1945, page 1562, provides for the salary and compensation of sheriffs of third class counties. Section 1 of this Act reads, in part, as follows:

"The sheriff in counties of the third class shall receive annually for his official services in connection with the investigation, arrest, prosecution, custody, care, feeding, commitment and transportation of persons accused of or convicted of a criminal offense, the following sums: In counties having a population of less than 7,500 the sum of \$1000; * * *"

Section 2 of House Bill 899, supra, reads, in part, as follows:

"The sheriff in counties of the third class shall be entitled to such number of deputies and assistants to be appointed by such official, with the approval of the judge of the circuit court, as such judge shall deem necessary for the prompt and proper discharge of his duties relative to the enforcement of the criminal law of this state. The judge of the circuit court, in his order permitting the sheriff to appoint deputies or assistants, shall fix the compensation of such deputies or assistants. * * * * *
The sheriff may at any time discharge any deputy or assistant and may regulate the time of his or her employment."

Considering only these statutes it would appear that deputies could be appointed only if necessary for the proper discharge of the sheriff's duties relative to the criminal laws of this state. This view is substantiated by Section 9 of House Bill 899, supra, which provides, that "all acts or parts of acts inconsistent with this act are hereby repealed." The election duties are, of course, purely civil matters.

However, it must be noted that Sections 1 and 2 of House Bill 899, supra, deal only with salaries to be paid sheriffs and their deputies, which salaries are given in lieu of the fees collected in criminal matters by such officers. Section 3 of this Act provides that sheriffs shall pay over to the county treasurer all fees arising in connection with criminal matters, and also expressly provides that such officers "shall retain all fees collected by him in civil matters." It is no doubt true that deputies appointed to assist in election duties could not be appointed and given compensation in the form of a salary as this

Hon. J. P. Morgan

can only be done when the appointments are necessary to assist in the discharge of duties in criminal matters. Yet there is a general statute, Section 13133, R. S. Mo. 1939, which provides that "any sheriff may appoint one or more deputies, with the approbation of the judge of the circuit court." Deputies appointed under authority of this general statute would be allowed no salary compensation but would have to look to the sheriff for his compensation. The sheriff is entitled to the fee provided for in Sec. 13399, supra, which fee he can retain as it is chargeable in a civil matter.

It is a general rule of statutory construction that laws should be construed to harmonize and effect be given to each if possible. If the sheriff is to perform the election duties formerly performed by the constable and should he find it necessary to have additional deputies to perform same, he must have the power under House Bill 899, but he does have such power to appoint under the general statute, unless this latter statute is inconsistent with House Bill 899.

Section 2 of H. B. 899, provides for the appointment of deputies when the compensation to such deputy is to be in the form of a salary, which is not inconsistent with the appointment of deputies under the general statute to perform duties relating to civil matters, as in this case and where such deputy will have to look to the sheriff for his compensation. Appointment under H. B. 899 must be made necessary and relate to a proper discharge of duties in criminal matters, whereas appointment under the general statute can be made only in relation to civil duties.

As heretofore mentioned those deputies appointed to assist the sheriff in his election duties can receive no salary compensation, but must look to the sheriff for their compensation.

CONCLUSION

It is the opinion of this department that the sheriff in a county of the third class may appoint, with the approbation of the judge of the circuit court, such deputies as may be necessary to properly perform the election duties formerly enjoined by law on the office of constable. It is not necessary however that there be a deputy at each voting place. Such deputies must look to the sheriff for their compensation, and are entitled to no salary.

APPROVED:

J. E. TAYLOR
Attorney General

Respectfully submitted,

RICHARD H. VOSS
Assistant Attorney General