

STATE OF KANSAS

## Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider  
Attorney General

February 9, 1978

ATTORNEY GENERAL OPINION NO. 78- 61

Ms. Karen Barefield  
Ottawa County Attorney  
Ottawa County Courthouse  
Minneapolis, Kansas 67467

Re: Courts--Bailiffs--Appointment

Synopsis: A county sheriff may lawfully be appointed bailiff of the district court, and may receive such compensation as is provided for that position in the budget of the district court.

\* \* \*

Dear Ms. Barefield:

You advise that the bailiff of the district court has retired. The administrative judge has suggested that the position be filled by the sheriff, the duties of bailiff requiring generally only one half day per month. You request my opinion whether a county sheriff may serve as bailiff, and if so, whether he is entitled to compensation for this duty.

The sheriff may serve as bailiff unless, first, there is some statutory prohibition against it, and second, unless the offices are legally incompatible. I find no statutory prohibition which would prevent the sheriff from serving in that position. Concerning the test of incompatibility, in *Dyche v. Davis*, 92 Kan. 971 (1914), the court stated thus:

"Offices are incompatible when the performance of the duties of one in some way interferes with the performance of the duties

Ms. Karen Barefield  
Page Two  
February 9, 1978

of the other. This is something more than a physical impossibility to discharge the duties of both offices at the same time. It is an inconsistency in the functions of the two offices." 92 Kan. at 977.

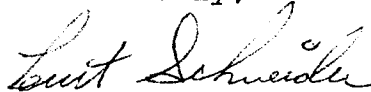
There is no inconsistency between the duties of bailiff and of sheriff. Indeed, K.S.A. 19-812 states thus, in pertinent part:

"The sheriff in person or by his under-sheriff or deputy . . . shall attend upon the several courts of record held in his county, and shall receive such fees for his services as are allowed by law."

Bailiffs are appointed by the administrative judge pursuant to K.S.A. 1977 Supp. 20-345, which provides that persons appointed thereunder "shall receive such compensation in the amount provided for in the district court budget."

Thus, in my opinion, the sheriff may be appointed bailiff of the district court, and may receive such compensation therefor as is provided for in the budget of the district court.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj