

Mr. Howard C. Beck, Jr., City Auditor (cont'd)

public official charged with certain responsibilities; is a constitutional officer under the provisions of Article V of the Constitution of Maryland, and the provisions of Article 10, Sections 33 to 39 inclusive, of the Code of Public General Laws, 1939 Ed., as amended. It appears that the Sheriff is withholding the percentage fee from the monies collected for the State's Attorney, and remitting them to the Mayor and City Council, by virtue of the Constitutional Amendment to Section 9, Article V of the Constitution of Maryland (pursuant to Chapter 490 of the Acts of 1943 as ratified in the General Election of November, 1944) and the Constitutional Amendment of Article IV, Part V-A, Section 44 (pursuant to Chapter 786 of the Acts of 1945 as ratified at the November Election of 1946).

Although an attorney is regarded as an "officer of the court" he cannot, in any true sense, be considered a "public officer" unless he is filling a public position, for a definite term of office and charged with specific official duties. (See Ex Parte Williams 24 S.W. 580, 581; Ex Parte Garland 71 U.S. (4Wall) 333; Ex Parte Law 35 Ga. 285; and Ex Parte Yale 24 Cal. 241).

The question is next then presented;- Are the fees collected by the Sheriff of Baltimore City for attorneys - in the form of appearance fees, etc. - "Officers" fees, to bring them within the intent and meaning of Article 36, Section 29 (a)?

Article 36, Section 10, Title "Fees of Officers", Sub-title "Attorneys", provides as follows:

"Attorneys at law shall be entitled to demand and receive the following fees, to wit:

For bringing, prosecuting or defending any suit or action at law in any of the courts of this State of original jurisdiction	\$5.00
For prosecuting or defending any cause, plaint or action, including all proceedings to collect money due on mortgage, in any of the courts of equity of this State	10.00
For prosecuting or defending any cause in any of the orphans' courts in this State	10.00
For prosecuting or defending any cause in the court of appeals	10.00
For prosecuting or defending in any criminal cases in any of the courts of this State having criminal jurisdiction, when the punishment for the offense charged is death or confinement in the penitentiary	10.00
In all other criminal cases	5.00"