

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

"The commission collected by the defendant, based on fees and costs due the State's Attorney and clerk of the Criminal Court of Baltimore and retained by the defendant, as set forth * * *, is strictly analogous to, and falls directly within, the principle, applicable to the other amounts retained by him and were in excess of his salary. They were commissions legally charged and received by him as sheriff for collecting officers' fees, and were authorized by section 28 of Article 36 of the Code (Bagby's), and must be turned over to the State by him". (Citing *Banks v. State*, supra; *State v. Green*, supra). (Underscoring supplied).

In 21 Opinions of the Attorney General, 564, the question was raised as to the legality of a deduction of 10% by the Register of Wills from the appearance fees due attorneys appearing in the Orphans' Court. The Attorney General cited the case of State v. Green, 120 Md. 681, and pointed out that the Court of Appeals in that opinion had differentiated between fees payable to the State through the Sheriff and other receipts not required to be paid for the account of the State, and held that the matter of the deduction of the 10% was one between the Register of Wills and the lawyers who entered their appearance in the court, and that such commissions were not to be accounted for to the State.

None of these opinions cited are expressly applicable to the question here involved, although one's first impression is, that since attorneys are included within the definition of "officers" on whose fees the Sheriff of Baltimore City is required under Article 36, Section 29 (a) to collect a fee in the amount of 6%, a careful reading of that provision of Article 36, Section 29 (a) contains the language "for collecting officers' fees, for every hundred, six per cent". It is to be pointed out that the Legislature in the language chosen for use in this section did not say "for every hundred, \$6.00", nor did they say "for every hundred, or fraction thereof, six per cent", nor did they say for "collecting officers' fees, six per cent". (Compare with Article 36, Section 12 (a) "Fees of Clerks of the Court", Sub-sections (11, 14, 21) where the language used fixes the fees "for every one hundred words or figures or fractions thereof"). In these latter sections, the legislative language was definite and specific as to the fees allowed to Clerks of the Court for recording various papers, mortgages, etc., and fixes a definite norm for the payment and collection of said fees.