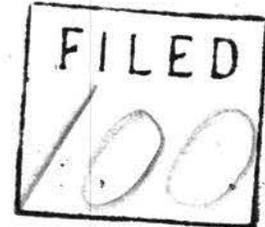


FEES: SHERIFFS: For summoning petit jury and for apprehension of fugitives.

6-17
June 16, 1937.



Mr. J. A. Yadon,
Clerk, Grundy County Court,
Albany, Missouri.

Dear Mr. Yadon:

We wish to acknowledge your request for an opinion under date of June 10, 1937, wherein you state as follows:

"In a conversation over the telephone this morning with one of the chief clerks in your office, he thought best for us to write for the information we desire, which is as follows:

"A Petit Jury was summoned for the March Term of Circuit Court, and the Sheriff received \$8.40 and \$40.00 for mileage, and for summoning twenty-five extra Jurors @ 25¢ each, of which would be \$6.25, and \$40.00 mileage for that, then the Circuit Judge excused the Jury until the 26th of May, and the Sheriff called them back, and charged the \$8.40 for summoning them, and \$40.00 mileage, and we would like to know if he should be allowed the same as he did in the beginning, for the same Jury when they were only excused by the Circuit Judge, and not dismissed.

"We would also like to know if the Sheriff should be allowed mileage for the apprehension of a fugitive."

I.

In reply to your request, we enclose herein a copy of an opinion rendered by this department to Hon. John A. Eversole, Prosecuting Attorney of Washington County, wherein we pointed out that:

"Under the provisions of this section as we construe it, the Legislative intent was to allow the sheriff \$8.40 for summoning the petit jury and their alternates, and in addition to that allowance, when required to travel in excess of five miles from the place where court is held, he should be paid mileage as provided in said section."

Section 8775, R. S. Mo. 1929, provides for the summoning of other jurors when the panel is exhausted:

"In all cases, if a panel be exhausted by challenge or otherwise before the jury is sworn, the court shall order the sheriff or other officer to summon a sufficient number of other persons to complete the jury."

We assume that the panel was exhausted and that it was necessary to summon twenty-five extra jurors.

We have examined Section 11789, R. S. Mo. 1929, relating to fees of sheriffs and fail to find any provision made for compensation for such service, and therefore it was apparently the intention of the Legislature that same be included in the flat fee of \$8.40.

In the case of State ex rel. v. Brown, 146 Mo. 401, 1. c. 406, 47 S. W. 504, the court in holding that no officer was entitled to fees of any kind for any service unless they were provided for by statute, said:

"It is well settled that no officer is entitled to fees of any kind unless provided for by statute, and being solely of statutory right, statutes allowing the same must be strictly

construed. State ex rel. v. Wofford, 116 Mo. 220; Shed v. Railroad, 67 Mo. 687; Gammon v. Lafayette Co., 76 Mo. 675. In the case last cited it is said: 'The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform, as such officer, unless the statute gives it. When the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services.' Williams v. Chariton Co., 85 Mo. 645."

However, Section 11789, R. S. Mo. 1929, does make provision "For executing and returning a special venire facias \$2.00", and "For each mile actually traveled in serving any venire summons, * * * when served more than five miles from the place where the court is held, * * * \$.10."

Absent such special venire, we are of the opinion that the sheriff would not be entitled to compensation for summoning the twenty-five extra jurors, and therefore was not entitled to mileage.

II.

Section 8754, R. S. Mo. 1929, provides when the jury list is to be prepared:

"The county court of each county at a term thereof not less than thirty days before the commencement of the circuit court or other court having civil and criminal jurisdiction, or civil or criminal jurisdiction, shall select names of not less than four hundred persons having all requisite qualifications of jurors; and the court in selecting such names shall select, as near as practicable, the same number from each township in the county according to the relative population, and shall determine

how many petit jurors and alternate petit jurors shall be selected from each township in said county and the names of such persons and the township from which they are selected shall be written on separate slips of paper of the same size and kind and all the names so selected from any one township shall be placed in a box with a sliding lid to be provided for that purpose and thoroughly mixed."

Under the above section it is contemplated that the jury list shall be prepared by the county court of each county for every term of court, and we are therefore of the opinion that it was the intention of the Legislature that the "standing jury" serve for the full term of court unless the petit jury shall have been discharged by the court before the end of the term.

Section 8760, R. S. Mo. 1929, provides that whenever the jury has been discharged, the court may order another petit jury at the same term or session of said court:

- "Courts having civil and criminal jurisdiction shall have power, whenever the grand or petit jury shall have been discharged, and it shall become necessary to have another jury, to order and require the sheriff, or other proper officer at the same term or session of said court, or at any adjourned or special term of such court, to summons from the citizens of the county having the requisite qualifications for jurors, a new panel of petit or grand jurors, and to order the sheriff or other proper officer to summon a standing petit jury whenever the county court shall have failed to select such petit jury; and whenever a greater number of petit jurors are required than the regular panel, or in case any juror shall fail to attend at the term required, the court may order the sheriff or other proper officer to summon a sufficient number of jurors as the occasion may require."

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We are of the opinion that if the jury had been discharged during the term of court, and the court had ordered a new jury, the sheriff would be entitled to the statutory fee of \$8.40 plus mileage, but that if the jury was merely dismissed for a date certain, as in the instant case, the sheriff would not be entitled to retain the statutory fee of \$8.40 nor mileage.

III.

Section 11792, R. S. Mo. 1929, sets out the mileage allowed sheriffs for their services in criminal cases:

"Sheriffs, county marshals or other officers shall be allowed for their services in criminal cases and in all proceedings for contempt or attachment as follows: Ten cents for each mile actually traveled in serving any venire summons, writ, subpoena or other order of court when served more than five miles from the place where the court is held: Provided, that such mileage shall not be charged for more than one witness subpoenaed or venire summons or other writ served in the same cause on the same trip."

From the foregoing, we are of the opinion that the sheriff would not be entitled to any mileage for the apprehension of a fugitive unless he be in possession of some writ or order of a court authorizing him to seek out the fugitive.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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