

**COSTS:** Sheriff entitled to fees, as set out in Section 11791, for duties performed under Section 3791, Session Laws 1937, page 222.

August 5, 1938

Honorable J. F. Ramsey, Warden  
Missouri State Penitentiary  
Jefferson City, Missouri



Dear Sir:

We acknowledge your request for an opinion dated July 5, 1938, which request reads as follows:

"The Laws of 1937, at page 221, make provision for the carrying out of the death sentence, when one is convicted and sentenced by the proper Courts, at the Missouri State Penitentiary under the supervision and direction of the Warden.

"Provision is also made for the certification of the action of said Courts to the Sheriff of the County in which conviction and sentence is had and, armed with this authority, the Sheriff is directed to deliver the one so convicted to the Warden at the proper time.

"As far as can be ascertained, no provision is made for paying the mileage, per diem or other items of cost necessarily incurred by the Sheriff for his services.

"Inasmuch as the convict is delivered to the Warden, not as a regular convict, but for safekeeping until the day of execution, the question has been raised as to whether

the aforesaid costs are properly chargeable to funds regularly appropriated for the support of the Penitentiary, or whether they should be taxed as costs in the Circuit Court where conviction is had and paid out of funds appropriated for the payment of criminal costs."

Section 3719, Laws of Missouri, 1937, page 222, reads as follows:

"When judgment of death is rendered by any court of competent jurisdiction a warrant signed by the judge and attested by the clerk under the seal of the Court must be drawn and delivered to the sheriff. It must state the conviction and judgment and appoint a day on which the judgment must be executed, which must not be less than thirty nor more than sixty days from the date of judgment, and must direct the sheriff to deliver the defendant, at a time specified in said order, not more than ten days from the date of judgment, to the warden of the State Penitentiary at Jefferson City, Missouri, for execution."

Under this section, the court must direct the Sheriff to deliver the defendant to the Warden of the State Penitentiary.

Section 11791, R. S. Mo. 1929, reads as follows:

" \* \* \* For the services of taking convicts to the penitentiary, the sheriff, county marshal or other officer shall receive the sum of three dollars per day for the time actually and necessarily employed in traveling to and from the penitentiary, and each guard shall receive the sum of two dollars per day for the same, and the sheriff, county marshal or other officer

and guard shall receive five cents per mile for the distance necessarily traveled in going to and returning from the penitentiary, the time and distance to be estimated by the most usually traveled route from the place of departure to the penitentiary; the sum of five cents per mile for each mile traveled, while being taken to the penitentiary, shall be allowed to the sheriff to cover all expenses of each convict while being taken to the penitentiary; and all persons, convicted and sentenced to imprisonment in the penitentiary at any term or setting of the court, shall be taken to the penitentiary at the same time, unless prevented by sickness or unavoidable accident. In cities having a population of two hundred thousand inhabitants or more, convicts shall be taken to the penitentiary not oftener than twice in any one month. When three or more convicts are being taken to the penitentiary at one time, a guard may be employed, but no guard shall be employed for a less number of convicts except upon the order, entered of record, of the judge of the court in which the conviction was had, and any additional guards employed by order of the judge shall, in no event, exceed one for every three prisoners; and before any claim for taking convicts to the penitentiary is allowed, the sheriff, or other officer conveying such convict, shall file with the state auditor an itemized statement of his account, in which he shall give the name of each convict conveyed and the name of each guard actually employed, with the number of miles necessarily traveled and the number of days required, which in no case shall exceed three days, and which account shall be

signed and sworn to by such officer and accompanied by a certificate from the warden of the penitentiary, or his deputy, that such convicts have been delivered at the penitentiary and were accompanied by each of the officers and guards named in the account."

As stated above, under Section 3719, Laws of Missouri, 1937, it provided that the defendant must be delivered by the Sheriff to the Warden, and in Section 11791, supra, it provided that in order that the Sheriff obtain his fees, the bill should be accompanied by a certificate from the Warden of the Penitentiary or his deputy that such convict had been delivered at the Penitentiary. Both the section under the 1929 statutes and the section under the 1937 Session Laws provided for the same duties of the Sheriff, and also provided for the taking of the convict to the Penitentiary. In reading the two sections together, and in construing the two sections together, one must look at the purpose of the two sections. Both sections had the same purpose and should be read together.

In the case of *Betz vs. Columbia Telephone Company*, (App.) 24 S. W. (2d) 224, the court said:

"To get at the true meaning of the language of the statute, the court must look at the whole purpose of the act, the law as it was before enactment, and the change in the law intended to be made."

Section 3719, Session Laws 1937, did not change the purpose of Section 11791, supra, and the Sheriff should be entitled to the same fees under Section 3719, Session Laws 1937, as he is entitled to under Section 11791, R. S. Mo. 1929. 59 C. J., at page 961, sets out the following:

"In construing a statute to give effect to the intent or purpose of the legislature, the object of the statute must be kept in mind, and such construction

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placed upon it as will, if possible, effect its purpose, and render it valid, even though it be somewhat indefinite. To this end it should be given a reasonable or liberal construction; and if susceptible of more than one construction, it must be given that which will best effect its purpose rather than one which would defeat it, even though such construction is not within the strict literal interpretation of the statute, and even though both are equally reasonable. Where there is no valid reason for one of two constructions, the one for which there is no reason should not be adopted. The legislature cannot be held to have intended something beyond its authority in order to qualify the language it has used." (Citing Betz vs. Columbia Telephone Co., (App.) 24 S. W. (2d) 224.

Section 11791 does not say delivery for imprisonment, but says delivery to the Penitentiary, and the delivery must be certified by the Warden. Section 3719, Laws Missouri 1937, page 221, does not provide any other method of payment. Reading the two sections together, it was the intention of the Legislature to pay the Sheriff the fees allowed under Section 11791, supra, or some other payment would have been provided, for the reason that it specifically provided that the court must direct the Sheriff to deliver the defendant at a specified time to the Warden of the State Penitentiary at Jefferson City, Missouri, for execution.

#### CONCLUSION

In view of the above authorities, it is the opinion of this department that the Sheriff is entitled to the fees as set out in Section 11791, R. S. Mo. 1929, for the taking of a convict to the Penitentiary under the duties imposed upon him by Section 3719, Session Laws of Missouri, 1937, page 222.

Yours very truly,

W. J. BURKE,  
Assistant Attorney General.

APPROVED:

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

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