

SHERIFFS: Entitled to mileage in each case for serving several summons on same trip.

February 28, 1941

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Honorable Forrest Ott
Clerk of the Circuit Court
Harrisonville, Missouri

Dear Mr. Ott:

Under date of February 24, 1941, you ask for an opinion as follows:

"IN RE: Martha Lee Brown vs W. R. Rogers.
Case No. 23607
Lee Brown vs W. R. Rogers.
Case No. 23608
Daily Brown vs W. R. Rogers.
Case No. 23609

"Three three above entitled cases were filed in the Circuit Court of Cass County, Mo., February 15, 1941.

"Summons was issued in each of the three cases that day and given to the Sheriff for service, the defendant residing in Pleasant Hill, Cass County, Mo.

"On February 17, 1941, the Sheriff served the three Summonses in the three separate suits on said defendant, W. R. Rogers.

"Please give us an official opinion on whether or not the Sheriff is entitled to charge mileage in each of the three cases, when the Sheriff served all three Summonses at once and just made one trip in so doing.

"The lawyers here disagree on this point, and I would appreciate very much if you would clear up this matter, once and for all, as I want to be sure and tax the costs on my books properly."

An officer is not entitled to fees unless provided for by Statute. State ex rel. v. Brown 146 Mo. 401, l. c. 406:

"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. Then 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."

The fees of sheriffs are prescribed by Section 13411, Article 2, Chapter 99, Revised Statutes of Missouri, 1939. This section is in part as follows:

"Fees of sheriffs shall be allowed for their services as follows:
* * * * *
For serving every summons or original writ and returning the same for each defendant \$1.00 * * * * *
For each mile actually travelled 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\$0.10
* * * * * No mileage fees for serving any writ, summons or other legal process shall be collected unless the sheriff shall actually travel the distance for which he makes such charge: * * * * *

Hon. Forrest Ott.

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There are three separate cases pending; it was necessary to serve the summons in each case. Had the cases been filed at different times serving the three summons would have required three trips. They were however filed at the same time, and the sheriff made only one trip, but the miles had to be travelled in order to serve the summons in each case. And for serving the summons and travelling the necessary miles to serve the summons the Sheriff is entitled to the fees provided for in Section 13411, R. S. 1939. There is no provision made for apportioning the mileage when the miles are travelled in one trip but serving writs in more than one case. Had the sheriff served three separate defendants the mileage would not be questioned.

CONCLUSION.

It is the conclusion that the sheriff's mileage should be charged in each case just as the fee for serving the summons is charged.

Also enclosed herewith are copies of two other opinions of similar character.

Respectfully submitted,

W. C. JACKSON
Assistant Attorney General.

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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Encs. 2.