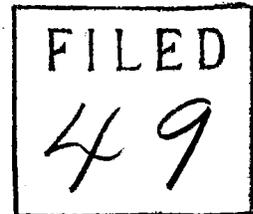


MILEAGE FEES: Marshal, sheriff or other officer operating under Sec. 13414, R. S. 1939, entitled to charge ten cents for each mile actually traveled in completing service of process, when served more than five miles from place where issued.

May 11, 1945



Honorable George Kitchen, Marshal
Kansas City Court of Appeals
Kansas City, Missouri

Dear Mr. Kitchen:

Your letter of May 8th addressed to the Attorney General, requesting an opinion of this department, is hereby acknowledged. Your letter of request is as follows:

"Will you kindly give me an opinion on the matter of mileage in serving writs or orders from this court when served more than five miles from this court house?

"For a number of years I have acted under what is now Section 13414, R. S. Mo. 1939, which specifies that the sheriff 'shall be allowed * * * ten cents for each mile actually traveled in serving any venire summons, writ, subpoena or other order of court.' When John M. Dalton was Marshal of the Supreme Court, he advised that that Court permitted him to charge ten cents for each mile traveled, that is, on the round trip.

"The present situation arises from service of a writ of habeas corpus served in St. Joseph, Missouri. It is 55 miles from the Court House here to the Court House in St. Joseph, or 110 miles round trip. Am I entitled to tax as costs mileage of \$5.50, or \$11.00 as has always been the custom? If the mileage is computed one way,

it will, of course mean that I could charge mileage going to the destination and have to dead-head back, or in other words, charge five cents per mile for miles actually traveled."

The question involved seems to call for a construction of Section 13414, R. S. Mo. 1939, which section provides as follows:

"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 saving (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."

While this question has not been passed upon by the courts in this State, still it would appear, from the decisions of other states where the same question has arisen, that a broad interpretation of our statute should be applied. Corpus Juris, Vol. 57, page 1131, par. 1199, says the following:

"Except in some jurisdictions, statutes relating to the mileage of sheriffs and constables are construed to allow mileage on a circular or round trip basis, or, in other words, for each mile traveled on the journey not only going but also returning."

With reference to sheriff's fees, the courts of Colorado and Kansas have held that such officer is entitled to mileage on the return trip when serving legal process. Cited in support of this are the following:

Sargent v. LaPlata County, 21 Colo. 158:

"In counties of the fourth class the sheriff is entitled for serving a mittimus to mileage of ten cents per mile in going to and returning from the place to which he takes a prisoner, and also to twenty cents per mile for the distance traveled while he has the prisoner in charge."

Norton v. Simms, 85 Kans. 822, holds the following:

"Under the statutory provision fixing the compensation of the sheriff for travel in serving or endeavoring to serve process the mileage is to be computed on the round trip basis, giving him ten cents per mile or fraction of a mile on the whole journey. He is not entitled to the full fee for the fraction on the going trip and for another fraction on the returning trip."

With respect to mileage allowed the sheriff and marshal operating under the above section (13414), it is apparent that they are entitled to charge ten cents a mile for each mile actually traveled in serving venire summons, writs, subpoenas or other orders of the court when served more than five miles from the place where the court is held.

In serving such writs, orders, etc., service is not complete until a return is made. A return is made upon the officer returning the same to the court from which he received it. Thus, it would take the round trip to complete service on any of such process issued by the court, and the mileage should be computed upon the trip, both going and returning.

Conclusion

Therefore, it is the opinion of this department that when a marshal, sheriff or other officer shall serve venire

Hon. George Kitchen

-4-

May 11, 1945

summons, writ, subpoena or other order of the court, when such service is more than five miles from the place where the court is held, he is entitled to charge ten cents a mile for each mile traveled while going and returning from and to the court which issued such process.

Respectfully submitted,

GORDON P. WEIR
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

GPW:EG