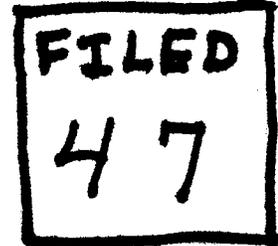


MAGISTRATE COURT: In re: Three questions on sheriff, jury and  
SHERIFF: witness fees in magistrate court.  
FEES:

September 3, 1947



Honorable O. A. Kamp  
Judge of Magistrate Court  
Montgomery County  
Montgomery City, Missouri

Dear Sir:

This will acknowledge your request for an opinion which, in part, reads:

"I would like to have information from your office in answer to the following questions:

"1. What fee should the sheriff receive for summoning a jury for Magistrate Court?

"2. What fee should jurors in Magistrate Court receive?

"3. What fee should witnesses in Magistrate Court receive?"

We shall endeavor to answer the three questions set out in your request in the order in which they appear.

Regarding the selection and summoning of juries for magistrate courts Senate Bill No. 107 was enacted by the 64th General Assembly with an emergency clause and was approved by the Governor and became effective June 23, 1947.

This bill generally provides that the county court shall select the names of prospective jurors to make up the jury list and upon request of any magistrate the clerk of the county court shall certify to the magistrate the first twenty-four names appearing on the jury list. Thereafter the clerk of the magistrate court shall summons each person on said list by registered mail. Thus, Section 7 of Senate Bill No. 107 in part provides:

"Upon receipt of the list of names certified by the county clerk, the clerk of the magistrate court shall summons each person on said

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list by registered mail, requesting a return receipt signed by addressee only, to appear before the magistrate on the date fixed by the magistrate and each person so summoned shall appear in obedience to such summons and shall serve as a juror until excused by the magistrate, \* \* \* "

When this procedure is followed the sheriff does not summons the jurors and consequently would receive no fee.

However, Section 15a of Senate Bill No. 107 further provides in part:

"In any county now or hereafter having a population of less than 70,000 inhabitants, the magistrate or magistrates may, by order of record, direct that jurors be selected by issuing a summons to the sheriff or other officer ordering him to summons the appropriate number of jurors. \* \* \* In the event that the magistrate or magistrates make the order herein provided for, the order shall have the effect of suspending the provisions of this act in the selection of the general county panel and the selection of jurors thereunder; and such provisions shall remain suspended until such order is rescinded."

Where the alternative procedure for summoning a jury as provided above is adopted the magistrate in making such order would be ordering a "special venire" which would have to be executed by the sheriff.

Montgomery County is a county of the 3rd class and regarding fees to be charged and collected by the sheriff from such counties Section 3, Laws Missouri 1945, page 1562 in part provides:

"It shall be the duty of the sheriff in counties of the third class to charge and collect in all instances every fee, both civil and criminal, including mileage, accruing to his office by law, except such criminal fees as are chargeable to the county, \* \* \* " (Underscoring ours.)

Since the above quoted section provides that the sheriff shall charge and collect all fees "accruing to his office by law" except such criminal fees as are chargeable to the county we must look to the existing fee statutes to determine the amount of such fees which

the sheriff is authorized to collect. Section 13411, R.S. Mo. 1939 which sets out the fees of the sheriff in part provides:

"For executing and returning a special  
venire facias - - - - - 2.00"

Therefore, in answer to your first question, where the magistrate orders a special venire as provided in Section 15a of Senate Bill No. 107, the sheriff would charge and collect a fee of \$2.00 for executing and returning it. However, if the jury summoned by the sheriff serves in a misdemeanor case where the defendant is acquitted the sheriff's fee for summoning the jury would be a criminal fee chargeable to the county and consequently would not be collected by the sheriff. We further point out that under Section 3, Laws Missouri, 1945, page 1562, the sheriff may only retain fees collected by him in civil matters.

In answer to your second question regarding juror's fees in the magistrate court, we again direct your attention to Senate Bill No. 107. Where the jurors on a regular panel are summoned by registered mail as provided in Section 7 of the Act, supra, the following is provided in Section 10 of the Act relating to the fees that they shall receive:

"Each juror on the regular panel summoned under this act shall receive three dollars per day for every day he may actually serve as such, and five cents for every mile he may necessarily travel going from his place of residence to the courthouse, or other place of service on the jury where the trial may be held at a place other than the courthouse, and returning to the same, to be paid out of the county treasury."

Where extra jurors are summoned for a specific case Section 10a of Senate Bill No. 107 provides as follows regarding the fees:

"Each juror summoned for service in a specific case and who actually serves in such case shall receive the same compensation as a juror on the regular panel and each juror summoned for a specific case but who does not actually serve in such case shall receive one dollar except that jurors summoned or serving in more than one case at the same place on the same day shall only be allowed fees in one case."

Where a jury is selected and summoned as provided in Section 15a of the Act, supra, each juror shall receive \$1.00 per day for every day he actually serves. Thus, Section 15a provides:

"\* \* \* In such event, each juror summoned shall receive one dollar per day for every day he may actually serve as such, and five cents for every mile he may necessarily travel going from his place of residence to the place where the trial is held, and such fees and expenses shall be taxed as costs in the particular case tried.  
\* \* \* "

Regarding the fees that witnesses in the magistrate court receive we are enclosing an opinion submitted to the Honorable Forrest Smith, State Auditor, dated July 29, 1947, which directly answers this question.

#### CONCLUSION

It is, therefore, the opinion of this department that: (1) Where a jury is selected and summoned by order of the magistrate as provided in Section 15a of Senate Bill No. 107 or where extra jurors are summoned by the sheriff for a specific case the sheriff shall charge and collect a fee of \$2.00 unless such fee is a criminal fee chargeable to the county. The fee of \$2.00 in a criminal case which is not chargeable to the county must be paid over to the county treasurer. The fee of \$2.00 in a civil case shall be retained by the sheriff. (2) Each juror on the regular panel and extra jurors summoned for service in a specific case shall receive \$3.00 per day for every day actually served and .05¢ for every mile necessarily traveled going from his place of residence to the place where trial is held and return; jurors selected and summoned by order of the magistrate as provided in Section 15a of Senate Bill No. 107 shall receive \$1.00 per day for every day actually served and .05¢ for every mile necessarily traveled in going from his place of residence to the place where the trial is held and return. (3) Witnesses in the magistrate court shall receive \$1.00 for each day of actual attendance.

Respectfully submitted,

APPROVED:

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Attorney General

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Enc.