

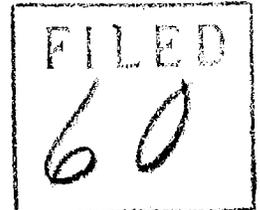
SHERIFF'S MILEAGE:

Sheriff entitled to actual expense not in excess of five cents per mile for

MAGISTRATE COURT COSTS:

taking prisoners to penitentiary; magistrate court costs to be taxed as provided for in Section 13409, R. S. Mo. 1939.

February 28, 1947



*Copy to
J. Smith*

Honorable Emory L. Melton
Prosecuting Attorney
Barry County
Cassville, Missouri

Dear Mr. Melton:

Your letter of recent date, requesting an opinion of this department, reads as follows:

"A question has arisen as to whether the sheriff of this county, Barry county being a third class county, is entitled to guard hire and expenses under the new law. For example; in taking prisoners to the state penitentiary or in effecting extraditions, is the sheriff entitled to one or two guards as the necessity demands plus their travel expenses?"

"The second problem I would appreciate information on is; what are the costs in the Magistrate Court in addition to the Sheriff fee of \$3.00 and the Prosecuting Attorney fee of \$5.00 in misdemeanors and preliminary hearings?"

Your two questions, which each embody a subquestion, for convenience, will be numbered 1 and 2, in the order presented, and will be set out at the beginning of the discussion of their particular subject.

Question No. 1.

"A question has arisen as to whether the sheriff of this county, Barry county being a third class county, is entitled to guard hire and expenses under the new law. For ex-

ample; in taking prisoners to the state penitentiary or in effecting extraditions, is the sheriff entitled to one or two guards as the necessity demands plus their travel expenses?"

Section 13547.305, Laws of 1945, p. _____, H.B. No. 899, Sec. 5, provides for the actual expense of each mile traveled by the sheriff or his deputies in serving warrants or any other criminal process, not to exceed five cents per mile. Said section reads as follows:

"In addition to the salary provided in Section 1 of this act, the county court shall allow the sheriffs and their deputies, payable at the end of each month out of the county treasury, actual expenses for each mile travelled in serving warrants or any other criminal process not to exceed five cents per mile."

Taking a prisoner to the penitentiary, we think, would come under the provision for serving other criminal process, in that when the prisoner is delivered to the penitentiary a copy of the commitment is served upon or delivered to the Warden; the commitment being a criminal process issued by the trial court. In that event, the sheriff and, or, his deputies, would be entitled to the actual expense not to exceed five cents per mile.

In this connection, the five cents per mile is a basis upon which expenses are computed, and covers all expenses, not to exceed five cents per mile, for the trip, which would include meals, lodging, if necessary, car expense or bus or train fare.

Section 13547.302, Laws of 1945, p. _____, H.B. 899, Sec. 2, provides that the sheriff, in counties of the third class, shall be entitled to such number of deputies and assistants, with the approval of the circuit judge, as such judge may deem necessary. Said section reads as follows:

"The sheriff in counties of the third class shall be entitled to such number of deputies and assistants, to be appointed by such official, with the approval of the judge of the circuit court, as such judge shall deem neces-

sary for the prompt and proper discharge of his duties relative to the enforcement of the criminal law of this state. The judge of the circuit court, in his order permitting the sheriff to appoint deputies or assistants, shall fix the compensation of such deputies or assistants. The circuit judge shall annually, and oftener if necessary, review his order fixing the number and compensation of the deputies and assistants and in setting such number and compensation shall have due regard for the financial condition of the county. Each such order shall be entered on record and a certified copy thereof shall be filed in the office of the county clerk. The sheriff may at any time discharge any deputy or assistant and may regulate the time of his or her employment."

In the event that assistance is required by the sheriff to take a prisoner to the penitentiary, and the sheriff requests the court to make an appointment for this purpose, as the only provision for sheriff's help is by deputies or assistants, the court, if the need arises and such is necessary, might make such appointment to aid and assist the sheriff and, the deputy's expenses could not exceed an amount in excess of five cents per mile; but, in any event, the full amount that can be claimed by either the sheriff or the deputy, for taking the prisoner to the penitentiary, figuring on a mileage basis, cannot exceed five cents per mile.

As to the expense of extradition; this is provided for in Chapter 30, Article 9, Revised Statutes of Missouri 1939, since these provisions have not been changed by any later enactment, and are found in Sections 3976 and Section 3977, the two sections which are pertinent to your question.

Section 3976, R. S. Mo. 1939, reads as follows:

"Whenever the governor of this state shall demand a fugitive from justice from the executive of another state or territory,

and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the state, to some messenger, commanding him to receive such fugitive and convey him to the sheriff of the county in which the offense was committed, or is by law cognizable."

Section 3977, R. S. Mo. 1939, reads as follows:

"The expenses which may accrue under the last section, being first ascertained to the satisfaction of the governor, shall, on his certificate, be allowed and paid out of the state treasury, as other demands against the state."

The expenses of the sheriff, if appointed by the governor as the governor's messenger, and the expenses of a guard, if allowed by the governor, are subject to the approval and satisfaction of the governor, and, if approved, shall be paid out of the state treasury on the governor's certificate.

Question No. 2.

We are enclosing a copy of an opinion of this Department, under date of February 10, 1947, to Honorable Gordon J. Massey, Prosecuting Attorney of Christian County, prepared by Assistant Attorney General Robert L. Hyder, which answers your second question.

CONCLUSION

Therefore, it is the opinion of this Department that the Sheriff and his deputy (if the court appoints a deputy), in taking prisoners to the penitentiary are entitled to their actual travel expense, which total expense shall not exceed the rate of five cents per mile, in addition to their salaries. Further, it is the opinion of this Department that the expenses of the Sheriff, as the Governor's messenger in extradition matters, which are in-

Hon. Emory L. Melton

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curred in effecting extradition, are subject to the approval of the Governor.

Respectfully submitted,

GORDON P. WEIR
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

GPW:CP