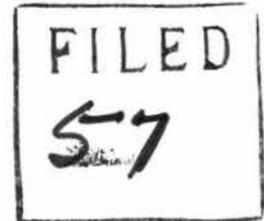


SHERIFFS: Sheriff entitled to five cents per mile for serving
OFFICERS: subpoenas in Christian county for a misdemeanor trial
in Douglas County; entitled to five cents per mile for
transporting prisoner from one county to another;
deputy sheriff not entitled to keep any pay for taking
prisoner to penitentiary, but guard, not deputy sheriff,
entitled to keep such pay.

February 23, 1950

Honorable Gordon J. Massey
Prosecuting Attorney
Christian County
Ozark, Missouri



Dear Sir:

This is in answer to your letter of recent date requesting
an official opinion of this department, and reading as follows:

"A number of questions have arisen regard-
ing the sheriff's office which I would
like to have your opinion on.

"1. A man is arrested for a misdemeanor
in Douglas County, the case comes for
trial and a number of witnesses are
ordered to be subpoenaed in Christian
County. The Christian County Sheriff
serves them. The question then arises;
Should the Sheriff collect off of the
Christian County court and hope that
the county will be repaid? Suppose the
defendant is convicted. What happens
then? I maintain the sheriff should
send his bill to the county ordering
the witnesses and should never collect
off of Christian County unless it is a
Christian County case.

"2. A defendant is in jail in Stone
County. He is also wanted for trial in
Christian County. The court orders the
Stone County sheriff to bring the pris-
oner to court in Christian County for
trial and after the trial orders defend-
ant taken back to Stone County. Should
the Stone county Sheriff bill Christian
County for 10¢ per mile and turn the
full amount to Stone County, billing

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Stone County for 5¢ per mile, or should he make his bill for 5¢ per mile to Christian County or for criminal work for some other does he get 10¢ per mile?

"3. The sheriff takes a prisoner to the penitentiary. The court allows an extra guard. Your recent opinion holds that if the paid deputy takes the trip with the sheriff he shall get nothing. (A) Is it the duty of the sheriff to take the paid deputy? (B) Can he take another deputy, not paid or some individual as a guard and if he does take someone other than the paid deputy, what allowance does the state allow such deputy and to whom should the pay for such guard be paid? The guard, the sheriff or to the county?"

Section 5, Laws of Missouri, 1945, page 1547, applicable to fourth class counties, of which Christian is one, provides 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 and necessary expenses for each mile traveled in serving warrants or any other criminal process not to exceed five cents per mile."

This section plainly puts upon the County Court of Christian County the obligation of paying the Sheriff of Christian County for serving subpoenas for witnesses for a trial of a misdemeanor case in Douglas County. Such section also places upon the County Court of Stone County the obligation of paying the Sheriff of Stone County for transporting, upon order of the court, a defendant from Stone County to Christian County and return. In both the cases listed above the sheriff is to collect the criminal costs assessed in such cases and turn over all such costs to his county court under the provisions of Section 3, Laws of Missouri, 1945, page 1547, reading as follows:

"It shall be the duty of the sheriff in counties of the fourth class to charge and collect in all instances every fee, both civil and criminal, including mileage,

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accruing to his office by law, except such criminal fees as are chargeable to the county, and such sheriff shall, at the end of each month, file with the county court a report of all fees charged and collected during said month, stating for what act or service said fees were charged and collected, together with the names of the state or counties on change of venue cases or persons paying or who or which are liable for same, which report shall be verified by the affidavit of such sheriff. It shall be the duty of such sheriff upon the filing of said report to forthwith pay over to the county treasurer all fees arising in connection with the investigation, arrest, prosecution, custody, care, commitment and transportation of persons accused of or convicted of a criminal offense or offenses, during the month and required to be shown in said monthly report, taking a duplicate receipt therefor, one of which shall be filed in his office and one in the office of the clerk of the county court and every such sheriff shall be liable on his official bond for all such criminal fees collected and not accounted for by him and paid into the county treasury; provided that he shall retain all fees collected by him in civil matters."

We see no conflict between the collection of mileage by the sheriff and the collection by the sheriff of criminal costs and the subsequent turning over by the sheriff of such criminal costs to the county court of the county of which he is sheriff.

With reference to your question as to the transportation of a prisoner to the penitentiary, we are enclosing copy of an official opinion of this department rendered under date of December 20, 1949, to Honorable J. L. Sturgis, Ass't. Prosecuting Attorney of Greene County. You will note that the conclusion of such opinion is based upon the provisions of Section 13 Article VI of the Constitution of Missouri, which section applies both to deputies who are paid as well as to those who are not paid, since deputy sheriffs obviously are officers. A guard who is not a deputy sheriff is entitled to the pay provided for a guard in Section 13413, R. S. Mo. 1939, quoted on page 3 of the enclosed opinion. We find no

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requirement in the law making it necessary for the sheriff to take a paid deputy sheriff as the guard when he takes a prisoner to the penitentiary and the circuit court authorizes the sheriff to have a guard therefor.

CONCLUSION

It is the opinion of this department that:

(1) The sheriff of Christian county who serves subpoenas for witnesses in Christian County for a misdemeanor case to be tried in Douglas County is entitled to five cents per mile, to be allowed by the Christian County Court for such service.

(2) The Stone County Sheriff who transfers a defendant, pursuant to order of the court, from a jail in Stone County to Christian County, and after trial of such defendant transports such defendant back to Stone County, is entitled to be allowed five cents per mile for such transportation by the Stone County Court.

(3) When a sheriff is allowed by the circuit judge a guard for a prisoner to be taken to the penitentiary, the guard is not entitled to retain the compensation provided in Section 13413, R. S. Mo. 1939, if such guard is a deputy sheriff, but is entitled to retain such compensation if such guard is not a deputy sheriff. There is no requirement that the sheriff take a paid deputy sheriff as such guard.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CBB:ml

Enclosure