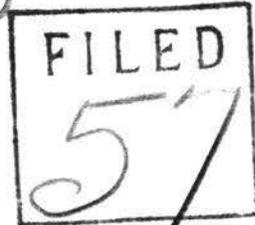


SHERIFF: Entitled to mileage in more than one case
where the same witness is used in more
than one case.

January 3, 1940

Mr. G. F. Martin
Sheriff of Saline County
Marshall, Missouri



Dear Sir:

We are in receipt of your request for an
opinion, dated December 29, 1939, which reads follows:

"There were two cases pending in
the Probate Court of Saline County.
The plaintiffs were different parties
but the same defendants were in both
cases. The causes were set for dif-
ferent days, but the plaintiffs had
subpoenas issued in both cases at
the same time, which were served on
various persons who were witnesses in
both causes. I desire an opinion as
to whether or not the sheriff is en-
titled to charge mileage for serving
the subpoenas in both cases, and if
not, in which case mileage should be
charged."

In the case of Ring v. The Chas. Vogel Paint &
Glass Company, 46 Mo. App. 374, l.c. 377, the court said:

"Preliminary to the discussion of the
items of cost here in controversy, it
may be stated that the entire subject
of costs, in both civil and criminal
cases, is a matter of statutory enact-
ment; that all such statutes must be
strictly construed, and that the officer

or other persons claiming costs, which are contested, must be able to put his finger on the statute authorizing their taxation. Miller v. Muegge, 27 Mo. App. 670; Shed v. Railroad, 67 Mo. 687; Gordons v. Maupin, 10 Mo. 352; Ford v. Railroad, 29 Mo. App. 616."

In view of the above authority the sheriff of Saline County can point to Section 11789 which partially reads as follows:

"For each mile actually traveled in serving any subpoena * * * when served more than five miles from the place where the court is held * * * *10"

In view of the above partial statement of fees allowable to the sheriff, it will be noticed that the sheriff is entitled to ten cents per mile when serving any subpoena more than five miles from where the court is held. In other words, without taking into consideration any other facts, he is allowed the ten cents per mile as mileage. The same section also provides:

"* * * 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."

This limitation only applies in case the service on more than one witness is made in the same cause. This section of the statute is unambiguous and needs no construction, as was held in the case of State v. Thatcher, 92 S. W. (2d) 640, 1.c. 643, where the court said:

" * * * First, because the language of the enactment is perfectly clear and unambiguous. In such case there is nothing to construe, and no intent contrary to the evident intent can rationally or permissibly be implied.
* * * "

If it had been the intention of the legislature that a sheriff should not be allowed mileage on the same witness in two different cases they would have plainly said so in this section, but, instead, they limited that restriction to mileage on more than one witness in the same cause on the same trip.

CONCLUSION.

In view of the above authorities, it is the opinion of this Department that the sheriff of Saline County is entitled to mileage in each case, even if the same witness, or witnesses, are used in both cases pending in the Probate Court of Saline County. The sheriff is limited to only charging mileage in each case for the several witnesses who are served on the same trip.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

TYRE W. BURTON
(Acting) Attorney General

WJB:RW