

CRIMINAL COSTS: Sheriff is only entitled to a reasonable amount
JURIES: allowed by the circuit judge and prosecuting
attorney for the board and lodging of a jury.

July 7, 1941

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Honorable Tom Moore, Judge
Ozark, Missouri

Dear Sir:

We are hereby answering your request of July 7, 1941, in reference to the payment of board and lodging for jurors in custody of the sheriff.

The facts upon which we base our opinion read as follows:

"When the jury is ordered kept together, is the sheriff entitled to \$26.00 for board and lodging for the jury where he does not furnish them three meals and lodging, or is the fee to be apportioned by allowing one-fourth for each meal in the day and the additional one-fourth for lodging if they are kept together overnight; in other words, if the sheriff furnishes lunch and supper, is he entitled to one-half of the \$26.00 or all of it, although he does not furnish lodging and breakfast to the jury?"

Section 4221, R. S. Missouri 1939, partially reads as follows:

"* * * And in all cases of felony, when the jury are not permitted to separate, it shall be the duty of the sheriff in charge of the jury, unless otherwise ordered by the court, to supply them with board and lodging during the time they are required by the court to be kept together, for which a reasonable compensation may be allowed, not to exceed two dollars per day

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For each jurymen and the officer in charge; and the same shall be taxed as other costs in the case, and the state shall pay such costs, unless in the event of conviction, the same can be made out of the defendant."

Under the above partial section it will be noticed that the following term is used, "* * for which a reasonable compensation may be allowed, not to exceed two dollars per day for each jurymen and the officer in charge;*" This clause is a limitation on the amount that can be allowed. It does not specifically state that two dollars per day should be allowed.

In construing statutes one must take other sections which apply to the same subject matter. Section 4237, R. S. Missouri 1939, reads as follows:

"It shall be the duty of the prosecuting attorney to strictly examine each bill of costs which shall be delivered to him, as provided in the next preceding section, for allowance against the state or county, and ascertain as far as possible whether the services have been rendered for which charges are made, and whether the fees charged are expressly given by law for such services, or whether greater charges are made than the law authorizes, and if said fee bill has been made out according to law, or if not, after correcting all errors therein, he shall report the same to the judge of said court, either in term or in vacation, and if the same appears to be formal and correct, the judge and prosecuting attorney shall certify to the state auditor, or clerk of the county court, accordingly as the state or county is liable, the amount of costs due by the state or county on the said fee bill, and deliver the same to the clerk who made it out, to be collected without delay, and

paid over to those entitled to the fees allowed."

Under the above section it is the duty of the prosecuting attorney to examine all bills of costs and among other things to determine "* * and whether the fees charged are expressly given by law for such services, or whether greater charges are made than the law authorizes, * * * " Also, under the above section the prosecuting attorney and the judge shall certify to the state auditor, or to the clerk of the county court, as to the amount of costs due by the state or county. Under partial section 4221, supra, the words "reasonable compensation" are used and under Section 4237, supra, it is the duty of the prosecuting attorney and the judge to determine whether or not the compensation allowed for the board and lodging of jury-men is reasonable.

The law is well settled that before any fees or costs are allowed to a public official he must be able to place his finger upon the law allowing him such fees. Under the facts in your case there is no specific allotment of fees for the board and lodging of jurors, but there is a limitation of two dollars per day for each juryman and the officer in charge. In the case of City of Greenfield v. Farmer, 190 S. W. 406, par. 2, the court, in passing upon the allotments of costs and fees, said:

"It is the well-settled law of this state and the country at large that the right to tax costs is purely made by statute; no such right existed at common law; and, unless there is a statute authorizing the taxing of costs against the plaintiff, the order of the circuit court is erroneous. It is held in the case of State ex rel. Clarke v. Wilder, 197 Mo. 27, 94 S. W. 499, that no costs can be taxed in any court except such as the statute in terms allows. In Ring v. Chas. Vogel Paint & Glass Co., 46 Mo. App. loc. cit. 377, the following language is used:

"* * * * It may be stated that the entire subject of costs, in both civil and criminal cases, is a matter of

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statutory enactment; 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."

As to the construction of the words "reasonable compensation" as set out in Section 4221, supra, the Supreme Court of this state in defining the word "reasonable" in the case of State v. Coulter, 204 S. W., page 5, l. c. 6, said:

"We notice that the words 'ordinarily careful' are used in the instruction in this case in place of the word 'reasonable' used in the cases cited. Black's Law Dictionary defines 'reasonable' thus: 'Agreeable to reason; just, proper, ordinary, or usual.' For the purposes of this case we consider the words 'reasonable' and 'ordinary' as synonymous. * * * *"

Also, in the case of Gray v. Cheatham, 52 S. W. (2d) 762 (Texas), l. c. 764, the Supreme Court of Texas, in defining the words "reasonable compensation", said:

"* * * Reasonable compensation might include more than the reasonable value of services rendered. By reasonable compensation is meant what would reasonably compensate one for a particular service under particular facts; and what would be the reasonable value of the services rendered would be what was the reasonable price paid for such service or like service in the community where such services or like services were rendered."

Under the above opinion it is always a question of fact as to the amount that would be considered reasonable compensation. It depends upon the circumstances, the time and the reasonable value for like services.

Reasonable compensation, as passed upon by the

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circuit judge and the prosecuting attorney, in allowing this fee, depends upon the facts of each individual act of a sheriff in the boarding and lodging of the jury. In the case of E. Wagner & Son v. Commissioner of Internal Revenue, 93 F. (2d) 816, 1. c. 818, the circuit court of appeals, in a tax income case, held as follows:

"The statute requires that an allowance for salaries or other compensation must be reasonable, before the taxpayer is entitled to a deduction therefor from gross income. Whether or not such salary or other compensation is reasonable is a question of fact. Sunset Scavenger Co. v. Commissioner, 9 Cir., 84 F. 2d 453, 454; General Water Heater Corp. v. Commissioner, 9 Cir., 42 F. 2d 419, 420. Generally, 'reasonable and true compensation is only such amount as would ordinarily be paid for like services by like enterprises in like circumstances.' * * * "

CONCLUSION

In view of the above authorities it is the opinion of this department that the circuit judge and prosecuting attorney, who certify the fee and cost bills, should determine whether the fee asked by the sheriff for the boarding and lodging of the jury and sheriff in charge of the jury, is reasonable.

It is further the opinion of this department that the reasonableness of the fee or cost bill is a question of fact and depends upon all of the circumstances as to time, place and market value of such necessities furnished by the sheriff to the jury and the deputy sheriff in charge.

It is not for this office to pass upon questions of fact which are directly under the supervision of the circuit judge and prosecuting attorney who are more acquainted with the service, costs and market value of such accommodations furnished by the sheriff.

APPROVED:

Respectfully submitted

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