Fees -- Constables: Constables shall collect fees as provided under Section 13399, **Laws of** Missouri, 1943, for serving process in criminal cases.

July 10, 1944.

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67

Hon. Robert V. Niedner
Prosecuting Attorney
St. Charles, Missouri

Dear Mr. Niedner:

We have your request for an official opinion of this office, dated July 5, 1944, which reads as follows:

"I have been attempting to resolve the various sections of the Statute relating to the fees of constables for the purpose of rendering an opinion on how much mileage a constable may be entitled to for serving subpoenas and other process in criminal cases in Justice Courts.

"Section 13399, R. S. Mo. 1939, gives him ten cents per mile for each mile actually travelled in serving any process; however, Section 13414 seems to limit mileage to situations where the place to which the constable travels is more than five miles from the place where the Court is held. That seems also to be the meaning of Section 13411 as that pertains to Sheriffs.

"The constables in this county have been claiming fees in accordance with Section 13399 and I am wondering whether Section 13414 limits Section 13399.

"I would appreciate your opinion with regard to these apparent discrepancies."

Section 13399, Laws of Missouri, 1943, page 872 provides in part as follows:

"Constables shall be allowed fees for their services as follows: * * *

"And for every mile traveled in taking a criminal to jail and returning therefrom, provided the distance so traveled be more than five miles, the sum of, per mile***.....$ .10

"For each mile actually traveled in serving any process.....$ .10

Section 13414, R. S. Mo. 1939, provides as follows:

"Mileage of sheriffs, county marshals and other officers in certain cases. -- Sheriffs, county marshals or other officers shall be allowed for their services in criminal cases and in all proceedings for contempt or attachment as follows: Ten cents for each mile actually traveled in saving (serving) any venire summons, writ, subpoena or other order of court when served more than five miles from the place where the court is held: 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." (Parenthesis ours)

When there is an apparent conflict between two statutes as in this case the general rule in construing such statutes is that the special statute shall govern over the general statute. It is further ruled that the last statute in point of order should have preference.

In the case of State ex rel. Brotherhood of American Yeomen v. Reynolds et al., 229 S.W. 1057, l.c. 1058, the rule was stated as follows:

"A familiar rule of construction frequently recognized by this court is that the general provisions of a statute must yield to special provisions where there is a conflict and where the general provisions in one part of the statute are inconsistent with the more specific provisions in another part. State ex rel. Garesche v. Roach, 258 Mo. loc. cit. 552, 167 S.W. 1008."

In the late case of Jacoby v. Missouri Valley Drainage District, 163 S.W. (2d) 930, l.c. 938, Judge Leedy summed up the rules for statutory construction as follows:

"The rules of statutory construction applying in such a situation are as follows:

"'The law is well settled that, where there is an irreconcilable conflict between two different parts of the same act, as a rule the last in order of position will control, unless there is some special reason for holding to the contrary.' State ex rel. Greene County v. Gideon, 273 Mo. 79, 87, 199 S.W. 948, 949.

"'Where general terms or expressions in one part of a statute are inconsistent with more specific or particular provisions in another part the particular provisions must govern, unless the statute as a whole clearly shows the contrary intention and they must be given effect notwithstanding the general provision is broad enough to include the subject to which the particular provisions relate.' 59 C.J. Section 596, p. 1000.

"'Where one part of the statute is susceptible of two constructions, and the language of another part is clear and definite, and is consistent with one of such constructions, and opposed to the other, that construction must be adopted which will render all clauses harmonious.' 59 C.J. Section 597, p. 1103."

Bearing the above rules of construction in mind, it is also the rule in this state that fee statutes must be strictly construed against the officer collecting them. That rule is stated in the case of Smith v. Pettis County, 136 S.W. (2d) 282, l.c. 285, as follows:

"The rule is established that the right of a public official to compensation must be founded on a statute. It is equally established that such a statute is strictly construed against the officer. Nodaway County v. Kidder, Mo. Sup., 129 S.W. (2d) 857; Ward v. Christian County, 341 Mo. 1115, 111 S.W. 2d 182."

CONCLUSION

It is therefore the opinion of this office that Section 13399, Laws of Missouri, 1943, is a special statute, particularly limiting Section 13414, R. S. Mo. 1939, and that constables in St. Charles Township should receive fees for serving process

in criminal cases as provided in Section 13399, supra.

Very truly yours,

GAYLORD WILKINS
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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