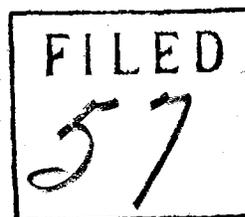


CORONER: Re: The Coroner is not entitled to mileage under the statute and taxi fare for travel too.

August 28, 1945

9/5



Mr. G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri

Dear Mr. Marr:

In a letter dated August 22, 1945, you requested an opinion of this department, writing as follows:

"A man killed his wife, then killed himself, and the coroner was called by a brother of the slain man. The coroner did not have a car and hired a taxi to take him to the scene of the homicide and suicide. He viewed the bodies, and made out a necessary death certificate, which in turn became the basis for a burial certificate.

"Then under section 13251-1939, the coroner certified his fee bill to the county, and in said fee bill was included \$5.00 for viewing the two bodies, and \$4.42 for mileage, and also, \$5.40 for taxi fare.

"The county court requests an opinion as to whether the county court is liable for the \$5.40 taxi cab fare?

"It is the contention of the court that even under either of section 13251, 13252 and 13253, of the 1939 statutes, the county is not liable for any taxi fares.

"The coroner, states that those named section provides for fees, costs, and expenses of the coroner. The coroner says that section 13424-1939, provides for his fees, and probably the costs of any inquest hearings, if had, but

that the same does not cover expenses. He says that expenses means, his expenses other than his actual fees and mileage, and that taxi fare is expenses. He states that the 8¢ per mile does not cover any travel cost, to him.

"What does expenses mean? Does that mean taxi fare herein? Should the county court also pay the mileage of 8¢ per mile."

As we read your letter, the question is one of whether the coroner is entitled to reimbursement for travel expenses to and from inquest hearings in an amount greater than the .08¢ per-mile which is allowed him under section 13424, R. S. Mo. 1939. For a determination of this question we examine the pertinent sections of the statute regarding the costs and fees of a coroner. Section 13424, reads as follows:

"Coroners shall be allowed fees for their services as follows: Provided, that when persons come to their death at the same time or by the same casualty, fees shall only be paid as for one examination:

"For the view of a dead body-----	\$5.00
For issuing a warrant summoning each jury of inquest---	.75
For swearing each jury-----	.50
For each subpoena for witnesses (all names to be put in one subpoena if possible)-----	.25
For taking each recognizance (all names to be put in one recognizance)-----	.75
For going from his residence to the place of viewing a dead body and return, each mile-----	.08

"The above fees, together with the fees allowed jurors, constables and witnesses, in all inquests, shall be paid out of the county treasury as other demands. For performing the duties of sheriff, the coroners shall be entitled to the same fees as are for the time being allowed to sheriffs for the same services. R. S. 1929, Sec. 11802."

Section 13251, R. S. Mo. 1939, reads as follows:

"The coroner or other office holding an inquest

as provided for by this chapter, shall present to the county court a certified statement of all the costs and expenses of said inquest, including his own fees, the fees of jurors, witnesses, constables and others entitled to fees for which the county is liable; and the county court shall audit and allow the same, and shall make a certified copy of the same, without delay, and deliver such copy to the county treasurer, which copy shall be deemed a sufficient warrant or order on the treasurer for the payment of the fees therein specified to each person entitled to such fees. The county treasurer shall pay to each person on demand, or to his legal representatives, the fees to which he is thus entitled, and shall take the proper receipt therefor, and produce the same in his settlements with the county court as vouchers for the money so paid out by him. R. S. 1929, Sec. 11632."

An examination of section 13251, supra, shows, we think, that the costs and expenses to which the coroner is entitled and which he must certify to the County Court under that statute, are the fees to which he is entitled under section 13424. The section states that the certified copy of such expenses "shall be deemed a sufficient warrant or order on the treasurer for the payment of the fees therein specified to each person entitled to such fees." The statute says the County Treasurer shall pay each person "the fees to which he is thus entitled." The statute thus used the word "fees" twice in describing or referring to the costs and expenses.

The entire statute must be considered in determining the meaning of any portion thereof and, the primary rule of construction of statutes is to ascertain the law-maker's intent. (De Jarnett v. Tickameyer, 40 S. W. (2d) 686; City of St. Louis v. Pope, 126 S. W. (2d) 1201; Artophone v. Coale, 133 S. W. (2d) 343; American Bridge Co. v. Smith, 179 S. W. (2d) 12; Bowers v. Public Service Commission, 41 S. W. (2d) 810, 328 Mo. 770; Missouri Mutual Co. 62 S. W. (2d) 1058.

We think the use of the word "fees" specifically indicates the intent of the Legislature that the only costs allowable to the coroner shall be those which are allowable as fees. Section 13424,

August 28, 1945

supra, sets out the fees to which the coroner is entitled and, we think, he is entitled only to the allowance authorized by that section.

This conclusion in itself would preclude the allowance to the coroner of more than the .08¢ per-mile provided by the statute for traveling expenses. However, we think there is another equally persuasive reason for arriving at such a result. This reason is contained in the legal definition of the word "mileage." Mileage is the allowance for traveling expenses at a certain rate per-mile.

United States v. Smith (1895) 158 U.S. 346;
Collins v. Riley (1944 Colo.) 152 P. (2d) 169;
Steenson v. Wallace (1936 Kan.) 62 P. (2d) 907;
Caswell v. New York Cent. R.R. Co. (1933 Mich.) 248 N.W. 641;
State v. Calusen (1927 Wash.) 253 P. 805;
Richardson v. State (1902 Ohio) 63 N.E. 593.

In United States v. Smith, supra, the Supreme Court of the United States said, l.o. 349,350:

"1. The first item relates to the allowance of the claim for mileage. While an allowance for travel fees or mileage is, by section 823, included in the fee bill, we think it was not intended as a compensation to a district attorney for services performed, but rather as a reimbursement for expenses incurred, or presumed to be incurred, in travelling from his residence to the place of holding court, or to the office of the judge or commissioner. The allowance of mileage to officers of the United States, particularly in the military and naval service, when travelling in the service of the government, is fixed at an arbitrary sum, not only on account of the difficulty of auditing the petty items which constitute the bulk of travelling expenses, but for the reason that officers travel in different styles; and expenses, which in one case might seem entirely reasonable, might in another be deemed to be unreasonable. There are different standards of travelling as of living, and while the mileage in one case may more than cover the actual expenses

in another it may fall short of it. It would be obviously unjust to allow one officer a certain sum for travelling from New York to Chicago, and another double that sum, and yet their actual expenses may differ as widely as that. The object of the statute is to fix a certain allowance, out of which the officer may make a saving or not as he chooses, or is able. And while, in some cases, it may operate as a compensation, it is not so intended, and is not a fee, charge, or emolument of his office within the meaning of section 834. It is much like the arbitrary allowance for the attendance of witnesses and jurors, which may or may not be sufficient to pay their actual expenses, depending altogether upon the style in which they choose to live."

In *Steenson v. Wallace*, supra, l.c. 909, the court said:

"Generally, mileage is a travel allowance at a fixed rate per-mile, as applied to this case, mileage is a rate per-mile traveled, fixed and allowed by the Legislature to specified public officers for travel expenses in specified instances. Mileage may or may not equal or exceed actual expenses incurred, but without a statutory grant there is no mileage.* * *"

In *Caswell v. N. Y. Cent. R. R. Co.*, supra, l.c. 642, the court said:

"* * *Mileage is a well-established method, widely used in public and private business, of reimbursing an officer or employee for the expense necessarily sustained by him in traveling to perform his duties. It is merely a substitute for actual expenses, and, theoretically, covers only the cost of transportation of the individual officer or employee, and the rate is set upon that basis, unless otherwise indicated by circumstances.* * *"

In *Richardson v. State*, supra, the court said, l.c. 594;

"It must be conceded that the \$3 per day allowed the commissioner is the limit of his compensation for his day's work, in whatever way it may be performed in the discharge of his official duties. He cannot lawfully claim that the county is also bound to pay his board, or other personal expenses. And the "mileage" allowed him is intended to compensate him for expenses of his travel on official business. That is the legal meaning and import of the term. It is defined in the Century Dictionary as 'payment allowed to a public functionary for the expenses of travel in the discharge of his duties, according to the number of miles passed over.' The same definition substantially is found in Bouvier's and other law dictionaries. The commissioner is at liberty, under our statute, to adopt and pursue his own method and means of travel. He may, if he chooses, travel by railway when accessible, or by vehicle hired by him, or use his own conveyance. But, whatever the mode adopted, he must pay all the expenses incurred, and his only source of reimbursement is the amount of the mileage allowed him. * * *"

It is clear, from the cases cited that the theory of the Legislature in providing for a certain rate of reimbursements for each mile traveled by the coroner is that the mileage allowance be reimbursement for travel expenses. Since the coroner is entitled to no other compensation than that allowed by statute, it follows that the .08¢ per-mile provided by the statute is the only and the entire allowance for travel expenses of the coroner. *Smith v. Pettus Co.*, 136 S. W. (2d) 282, 345 Mo. 839; *Rinehart v. Howell Co.* 153 S. W. (2d) 381, 348 Mo. 421.

Sections 13252 and 13253 R. S. Mo. 1939, deal with the payment of costs of an inquest on a dead body by relatives or other persons where the person has died from a cause other than violence or casualty. These sections are, therefore, not pertinent to the question

Mr. G. Logan Marr

-7-

August 28, 1945

presented herein.

CONCLUSION

It is, therefore, the opinion of this department that the County Coroner is entitled to travel expenses only in the extent of the .08¢ per-mile allowed by Section 13424 of the Revised Statutes of Missouri, 1939.

Respectfully submitted,

SMITH N. CROWE, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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