

SHERIFFS:  
CRIMINAL COSTS:  
FEES, COMPENSATION  
AND SALARIES:

A sheriff's fees computed in accordance with Section 57.290, RSMo 1969, incurred when he apprehends a person, charged with the criminal offense of breaking jail after conviction, and transports that

person from the county of his apprehension to that in which the offense was committed, even though such offense be for breaking jail after conviction, are properly included in those costs which may be taxed against the State pursuant to the provisions of Section 550.020, RSMo 1969.

OPINION NO. 172

September 15, 1970

Honorable James H. Counts  
Prosecuting Attorney  
Reynolds County  
P. O. Box 52  
Centerville, Missouri 63633



Dear Mr. Counts:

This official opinion is issued in response to your request for a ruling on the following question:

"X was convicted of a felony in County R, and was sentenced to imprisonment in the county jail. Subsequently, X escaped, but was later apprehended. He was accused of breaking jail after conviction of a felony. X plead (sic) guilty to this offense (a felony) and was sentenced to two years in the penitentiary. X is unable to pay the court costs arising out of the jail break case. The State has refused to pay the costs in the matter, because Section 49.310, Revised Statutes of Missouri, provides that each county erect and maintain a good and sufficient jail."

We have been advised the comptroller pays court costs in a case where the escapee is sentenced to the Department of Corrections for breaking jail if the prisoner is indigent, but does not allow mileage fees for apprehending the prisoner in such a situation. Therefore, we limit our opinion to whether the sheriff's mileage fee incurred when apprehending an escaped prisoner is properly included as court costs and in the event of a felony conviction, chargeable to the State.

Honorable James H. Counts

The circumstances under which the State becomes liable for court costs are set forth in Section 550.020, RSMo 1969, which provides, in part, as follows:

"1. In all capital cases in which the defendant shall be convicted, and in all cases in which the defendant shall be sentenced to imprisonment in the penitentiary, and in cases where such person is convicted of an offense punishable solely by imprisonment in the penitentiary and is sentenced to imprisonment in the county jail, workhouse or reform school because such person is under the age of eighteen years, the state shall pay the costs, if the defendant shall be unable to pay them, except costs incurred on behalf of defendant."

Section 57.290, RSMo 1969, provides, in part, as follows:

"4. The sheriff or other officer who shall take a person, charged with a criminal offense, from the county in which the offender is apprehended to that in which the offense was committed, or who may remove a prisoner from one county to another for any cause authorized by law, or who shall have in custody or under his charge any person undergoing an examination preparatory to his commitment more than one day for transporting, safekeeping and maintaining any such person, shall be allowed by the court, having cognizance of the offense, one dollar and twenty-five cents per day for every day he may have such person under his charge, when the number of days shall exceed one, and seven cents per mile for every mile necessarily traveled in going to and returning from one county to another, and the guard employed, who shall in no event exceed the number allowed the sheriff, marshal or other officer in transporting convicts to the penitentiary, shall be allowed the same compensation as the officer. One dollar and twenty-five cents per day, mileage same as officer, shall be allowed, for board and all other expenses of each prisoner. No compensation shall be allowed under this section for taking the prisoner or prisoners from one place to another in the same county, excepting in counties which have two or more

Honorable James H. Counts

courts with general criminal jurisdiction. In such counties the sheriff shall have the same fees for conveying prisoners from the jail to place of trial as are allowed for conveying prisoners in like cases from one county to another, and the expenses incurred in transporting prisoners from one county to another, occasioned by the insufficiency of the county jail or threatened mob violence, shall be paid by the county in which such case may have originated; provided that the court is held at a place more than five miles from the jail; and no court shall allow the expense of a guard, although it may have actually been incurred, unless from the evidence of disinterested persons it shall be satisfied that a guard was necessary; provided that when the place of conviction is remote from a railroad, upon which a convict may be transported to the penitentiary, the court before which such convict is sentenced may, for good cause shown, allow one guard for every two prisoners, such guard to receive one dollar and fifty cents a day and seven cents a mile for every mile necessarily traveled in going to and returning from the nearest depot on said railroad to the place where such convict was sentenced.

"5. These costs shall be taxed as other costs in criminal procedure immediately after conviction of any defendant in any criminal procedure . . . ."

This section specifically provides that a sheriff is to be allowed a fee for taking a person, charged with a criminal offense, from the county in which the offender is apprehended to that in which the offense was committed. The statutory exception is in the event the sheriff transports a prisoner from the jail in one county, to which the prisoner has been removed because of insufficiency of the jail in the county of the trial, to a place of trial in another county, then the fees shall be paid by the county in which the case originated.

Therefore, we conclude that a sheriff's fees computed in accordance with Section 57.290, RSMo 1969, incurred when he apprehends a person, charged with the criminal offense of breaking jail after conviction, and transports that person from the county of his apprehension to that in which the offense was committed, that such fees are

Honorable James H. Counts

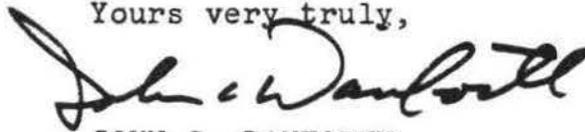
properly included in those costs which may be taxed against the State pursuant to the provisions of Section 550.020, RSMo 1969.

CONCLUSION

A sheriff's fees computed in accordance with Section 57.290, RSMo 1969, incurred when he apprehends a person, charged with the criminal offense of breaking jail after conviction, and transports that person from the county of his apprehension to that in which the offense was committed, even though such offense be for breaking jail after conviction, are properly included in those costs which may be taxed against the State pursuant to the provisions of Section 550.020, RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Gene E. Voigts.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH  
Attorney General