

SHERIFFS: Sheriffs may charge for serving notices  
SALARIES AND FEES: and for mileage in such service made by  
JURIES: the court pertaining to jurors and their  
service.

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March 19, 1941.

Mr. Willie C. Jones  
Sheriff of Shelby County  
Shelbyville, Missouri



Dear Mr. Jones:

This is in reply to yours of recent date wherein you submit the following:

"I would like to have your written opinion on these two questions:  
When a jury is called for a trial and a case has been dismissed or settled if the circuit judge orders the sheriff to stop the jury and not have them come in as per scheduled and the sheriff goes out and travels one hundred and fifty or two hundred miles to get them stopped, where the cost would be seventy-two dollars (\$72.00) to the county if they came in whereas by ordered, by the circuit judge the cost would be twenty or twenty-five dollars, or pay for the miles traveled, just to save the county money by stopping the jury.

"I would like to have your opinion on above, if its legal to collect a certain amount of money to stop a jury if ordered by the judge.

"When a jury has been summons when the court is in vacation and a trial is set, if they have been summoned

and dismissed once and the sheriff is ordered by the circuit judge to call them in for an additional trail, is it legal in your opinion to charge for the necessary miles traveled in calling the jury back at this later date for a trial that has been set for a later date?

"I would like an answer as soon as it will be convenient for your."

Your request goes directly to the question of whether or not a sheriff may be paid for his service in notifying the standing jury to attend or not to attend court on certain days. It is generally known that it is the practice of the circuit courts, in order to cut down the expenses of juries, to make orders that such juries will attend only on days when needed. Each day a jury attends court its expenses, without mileage, is \$72.00. It is a well known rule of law that, before an officer is entitled to compensation, he must be able to put his finger on the statute authorizing such compensation. The most recent statement of this rule is stated in Nodaway County vs. Kidder, 129 S. W. (2d) 857, 1. c. 860:

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 645."

Section 13411 R. S. Mo. 1939, provides for fees for sheriffs, and that part of it which especially pertains to your question is as follows:

"For summoning a standing jury . . . . \$8.40  
For serving every notice or rule  
of court, notice to take deposi-  
tions or citation . . . . . .50

"For each mile actually traveled in 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 . . . \$0.10 .

The word "notice" may generally be defined as that which imparts information of the fact to the one to be notified, so if the court makes an order for the sheriff to notify a juror concerning his service in that court, then the sheriff by so notifying the juror performs a service which comes within the claims of serving notices.

Under the provisions of Section 13411 cited above, it will be seen that the sheriff is entitled to 50¢ for serving a notice or rule of court. Therefore, if the court makes an order for the sheriff to give jurors certain notices and the clerk furnishes the sheriff with a certified copy of that order and the sheriff then serves this notice on the juror, then it is no question but that he would be entitled to the fees for serving notices and for whatever mileage in excess of five miles from the place of such court he may charge at the rate of 10¢ per mile therefor.

#### CONCLUSION

We are, therefore, of the opinion that the sheriff, for serving notices on jurors which are in the "standing jury", would be authorized to make a charge of 50¢ for each notice served together with mileage at the rate of 10¢ per mile for each mile traveled in service, more than five miles from the place of the court.

Mr. Willie C. Jones

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We are further of the opinion that the sheriff would be authorized to charge, for summoning the standing jury, \$8.40 only for each regular term of such court.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney-General

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