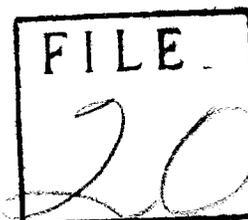


FEES: Expense of extradition paid only by the State.

April 15, 1942

Hon. Marshall Craig  
Prosecuting Attorney  
Mississippi County  
Charleston, Missouri



Dear Sir:

We are in receipt of your letter of April 8, 1942, containing the following request for an opinion:

"We have before the County Court a matter concerning costs that is not clear in my mind.

"It is the situation where our Sheriff goes into another state to bring back a prisoner, and is required by those in charge to pay a certain sum in the way of jail costs before they will release the prisoner. These amounts range from Ten to Twenty-five Dollars. The question is how he may be reimbursed for these amounts."

In reference to the payment of expenses incurred in bringing back fugitives to the state, the legislature enacted Section 3977 R. S. Missouri, 1939, which reads as follows:

"The expenses which may accrue under the last section, being first ascertained to the satisfaction of the governor, shall, on his certificate,

be allowed and paid out of the state treasury, as other demands against the state."

Under the above section the expenses must be paid by the state and we find no law which permits the county to pay such expenses.

It is solely in the discretion of the Governor as to the reimbursement of the expenses paid out by the messenger. It was so held in the case of State ex rel v. Allen, 180 Mo. 27, l. c. 31, where the court said:

"Under the statute quoted (sec. 2744, R. S. 1899) the duty of determining the question of the compensation and expenses of such messenger, is vested solely in the Governor, and he is the head of a co-ordinate branch of the government, and all his acts as such are in that capacity, and hence he can not be interfered with in the discharge of his duties by the courts. (State ex rel. Robb v. Stone, 120 Mo. 428; State ex rel. v. Meier, 143 Mo. l. c. 447; Albright v. Fisher, 164 Mo. l. c. 62; State ex inf. v. Shepherd, 177 Mo. l.c. 236.)

"The relator has performed a service for which he is entitled to be paid. The amount claimed is exactly such as is allowed a sheriff for similar services, and hence is not only prima facie reasonable, but is as such as the lawmakers have declared to be reasonable, and if this court had any power it would not hesitate to order the bill paid. But this court has no power in the premises. The Governor

Hon. Marshall Craig

-3-

April 15, 1942

alone has the power to determine how much shall be paid, and to order it paid. Until he does so the Auditor can not lawfully issue a warrant therefor. The peremptory writ of mandamus is therefore denied. \* \* "

CONCLUSION

In view of the above authorities, it is the opinion of this department that where the messenger pays jail costs in another state, in order to release a prisoner, the expenses can only be paid by the State upon the order of the Governor.

It is further the opinion of this department that the county is not permitted to pay these expenses.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General of Missouri

WJB:RW