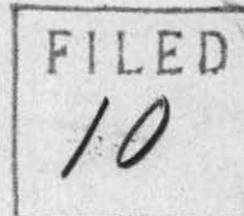


CORONERS: Fees in connection with coroner's
SHERIFFS: inquests.

June 10, 1949



Hon. Ted A. Bollinger
Prosecuting Attorney
Shelby County
Shelbyville, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"1. Does a coroner receive compensation for mileage under Laws of 1945, p. 992, Section 1a, or under Section 13424, R.S. Mo. 1939, which apparently has not been repealed? The former provides for 5 cents per mile while the latter provides for 8 cents.

"2. Section 13411, R.S. Mo. 1939, provides for mileage for a sheriff when serving subpoenas, etc., when more than five miles from the place court is held. Does this section apply to coroner's inquests and if so, does the place where the inquest is held become the determining point for computing mileage?

"3. Are a sheriff and his deputy entitled to retain witness fees and mileage taxed as costs in a coroner's inquest?"

Section 13424, R. S. Mo. 1939, provides, in part, 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 going from his residence to the place of viewing a dead body and return, each mile08

"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."

Section 1(a) of an act of the 63rd General Assembly, found in Laws of 1945, page 992, Section 13259.5, Mo. R.S.A., provides:

"The county court shall allow the coroner, payable at the end of each month out of the county treasury, five cents per mile for each mile actually and necessarily travelled in the performance of his official duties."

This act applies to counties of the third class, the class to which Shelby County belongs.

Section 1 of the act fixes the salaries of coroners in counties of the third class, ranging from \$120.00 to \$600.00 per annum.

Section 2 of the act, Section 13259.6, Mo. R.S.A., provides:

"It shall be the duty of the coroner in counties of the third class to charge and collect in all instances every fee accruing to his office by law; except such fees as are chargeable to the county and such coroner shall, at the end of each month, file with the county court a report of all fees charged and collected during said month, stating on what account said fees were charged and collected, together with the names of persons paying or who are liable for the same, which report shall be verified by

the affidavit of said coroner. It shall be the duty of said coroner, upon the filing of such report, to forthwith pay over to the county treasury all fees required to be shown in said monthly report, taking a duplicate receipt therefor, one of which shall be filed in his office and one in the office of the clerk of the circuit court, and every such coroner shall be liable on his official bond for all such fees collected and not accounted for by him and paid by him to the county treasury." (Underscoring ours.)

Prior to the adoption of this act, coroners were compensated entirely by fees. The 1945 act was enacted in accordance with the general plan, following the adoption of the 1945 Constitution, of placing county officers on a salary rather than a fee basis.

As the emphasized words in Section 2 of the act, supra, provide, the coroner is now required to collect all fees accruing to his office, except such as are chargeable to the county. All of the fees provided by Section 13424, supra, are chargeable to the county. Therefore, we feel that the act of 1945 has repealed, by implication, Section 13424, R.S. Mo. 1939, and that section is no longer in effect. Consequently, the coroner would now receive mileage at the rate of five cents per mile in accordance with Section 1(a) of the act of 1945, supra.

As for your second question, Section 13411, R. S. Mo. 1939, provides, in part:

"Fees of sheriffs shall be allowed for their services as follows:

* * * * *

"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 trip10

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(Underscoring ours.)

This section clearly refers to proceedings of court. Although cases have described a coroner's inquest as a quasi judicial proceeding (Patrick v. Employers Mutual Liability Ins. Co., 233 Mo. App. 251, 118 S.W. (2d) 116), it has never been termed a court. A coroner is not a judicial officer (State v. Dougherty, 216 S.W. (2d) 467).

The general rule is that an officer is entitled to fees only when there is a clear statutory provision therefor (Nodaway County v. Kidder, 344 Mo. 795, 129 S.W. (2d) 857). Applying that rule to the section referred to by you, we are of the opinion that the sheriff is not entitled to receive any fees thereunder for services in connection with a coroner's inquest.

As for your third question, Section 13 of Article VI of the Constitution of 1945 provides:

"All state and county officers, except constables and justices of the peace, charged with the investigation, arrest, prosecution, custody, care, feeding, commitment, or transportation of persons accused of or convicted of a criminal offense shall be compensated for their official services only by salaries, and any fees and charges collected by any such officers in such cases shall be paid into the general revenue fund entitled to receive the same, as provided by law. Any fees earned by any such officers in civil matters may be retained by them as provided by law."

Although a coroner's inquest has been held not to be a part of a criminal prosecution (State v. Bartley, 337 Mo. 229, 84 S.W. (2d) 637), it has been held to be "one step taken in the enforcement of the criminal laws of the land." (Houts v. McCluney, 102 Mo. 13, 1.c. 17, 14 S.W. 766.) See 18 C.J.S., Coroners, Section 14, page 293. In view of such definition of the character of a coroner's inquest, we are of the opinion that a sheriff and his deputy are not, under the constitutional provision quoted above, entitled to retain witness fees and mileage taxed as costs in a coroner's inquest.

Conclusion.

Therefore, it is the opinion of this department that:

1. A coroner receives compensation for mileage under Section 1(a), Laws of 1945, page 992, and not under Section 13424, R. S. Mo. 1939.
2. A sheriff is not entitled to mileage under Section 13411, R. S. Mo. 1939, which provides for mileage for sheriffs when serving subpoenas, etc., when more than five miles from the place court is held.
3. A sheriff and his deputy are not entitled to retain witness fees and mileage taxed as costs in a coroner's inquest.

Respectfully submitted,

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APPROVED:

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