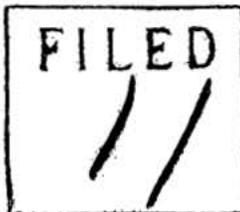


OFFICERS: Sheriff of third class counties entitled
SHERIFFS: to mileage for making investigation of
FEES AND SALARIES: persons accused of or convicted of a
criminal offense.



January 16, 1952

Honorable Edwin F. Brady
Prosecuting Attorney
Benton County
Warsaw, Missouri

Dear Sir:

Your letter at hand requesting an official opinion of this department, which reads as follows:

"Section 57.430 provides among other things that sheriffs and their deputies shall be allowed actual expenses, not to exceed 7 cents per mile, maximum \$75.00 in any one month, for 'investigation of persons accused of or convicted of a criminal offense.'

"Does this or any other existing law provide mileage or compensation for the sheriff in investigating accidents, drownings and other occurrences which the sheriff is ordinarily called to investigate, but where no charge has been filed and in many cases where no charge is ever filed?

"In many cases, almost all of the investigation is done before the person is accused, and in many cases where much investigation is required, it is finally determined that no charges can be filed."

It is assumed that the investigations to which you refer in your request are performed in connection with the duties imposed upon him by Section 57.110, RSMo 1949, which requires him to be a conservator of the peace within his county.

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Section 57.430, RSMo 1949, as amended by House Bill No. 100, enacted by the 66th General Assembly, provides for the sheriff of third and fourth class counties receiving mileage in connection with the performance of certain duties. Thus the statute, in part, provides:

"In addition to the salary provided in sections 57.390 and 57.400, the county court shall allow the sheriffs and their deputies, payable at the end of each month out of the county treasury, actual and necessary expenses for each mile traveled in serving warrants or any other criminal process not to exceed seven cents per mile, and actual expenses not to exceed seven cents per mile for each mile traveled, the maximum amount allowable to be seventy-five dollars during any one calendar month in the performance of their official duties in connection with the investigation of persons accused of or convicted of a criminal offense. * * *"

Your inquiry asks what mileage the sheriff of a third class county is entitled to receive, if any, in making investigations of accidents, drownings and other occurrences in connection with which formal charges may or may not be subsequently instituted.

The Supreme Court of Missouri has many times held that for a public officer to be entitled to be compensated for services rendered, such as a fee, salary or mileage, he must point to the statute authorizing such payment, and unless the statute clearly provides for such payment, the services rendered by a public officer are deemed to be gratuitous. Thus, in *Nodaway County v. Kidder*, 344 Mo. 795, 129 S.W. (2d) 857, 860, the rule was stated as follows:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such

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statutes, too must be strictly construed as against the officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S.W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S.W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656.

"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."

Consequently, in construing Section 57.430, supra, we must apply the rule as declared in the above case.

If subsequent to an investigation made by the sheriff of the kind of accidents referred to in your request or of other occurrences further action was taken resulting in the formal accusation of a person with the commission of a criminal offense, such as the filing of a complaint, information or return of an indictment by a grand jury, we believe the sheriff would be entitled to mileage as provided by the above statute, even though no individual was brought to trial and no conviction was ultimately obtained. Under such circumstances we believe that such an investigation would have been made of a person accused of a criminal offense within the meaning of the statute.

Nor do we believe that it would in all instances necessarily require a person to be charged with a crime by formal judicial procedure for the sheriff to be entitled to mileage who made an investigation of such person against whom the accusation was made.

For example, if a sheriff was apprised of facts involving certain acts of a person or persons which would constitute the commission of a crime and thereafter undertook to make his investigation, we believe this would be sufficient to entitle him to his mileage incurred by making such investigation.

In the case of Galloway v. Department of Motor Vehicles, 231 N.C. 447, 57 S.E. (2d) 799, the Supreme Court of North Carolina was considering workmen's compensation death claims for the death of two highway patrolmen caused by an airplane accident. A convict has escaped, and a woman reported to the

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patrolmen that an escaped convict had come to her house, dressed in stripes and armed with a pistol, and had threatened to kill her whole family if he wasn't given something to eat. The house was located in an isolated section, and in making their search for the convict the two patrolmen, one of whom was a licensed pilot, procured the use of a small airplane. The plane subsequently crashed, killing both of them. The defense to the claims was that the patrolmen were acting without authority and outside the scope of their employment.

The statute referring to the authority of the Highway Patrol provided that "such officers may at any time and without special authority, either upon their own motion or at the request of any sheriff or local police authority, arrest persons accused of highway robbery, bank robbery, murder, or other crimes of violence." In upholding the claims, the court, at S.E. 802, said:

"The contention of the appellees is that the officers who undertook to find and arrest the subject of Miss Stevens' information had authority to act in the premises 'upon their own motion' because her information amounted in substance to an accusation of a 'crime of violence' within the purview of the statute, to wit: Armed robbery from the person, since he was fed or food given him because his statement that he wanted something more to eat was backed by a display of fire-arms and a threat to kill. We think this statement, made to the patrolman, may be reasonably so construed.

" * * * In the much narrowed area of discussion as to the source of authority it makes no difference as to the status of the man sought as an escaped convict - whether he wore stripes or dungarees, or hailed from Kalamazoo or Timbuktu. He was a man accused of a crime definitely analogous to those named in the cited law, or if not so, then covering a still more extensive category as a crime of violence and it makes no difference whether we apply the principle ejusdem generis to the latter phrase or accept it as an independent delegation of authority.

