

SHERIFFS: Mileage to be allowed sheriff of Jasper County for transportation of prisoners between Joplin and Carthage.



November 5, 1954

Hon. Stewart E. Tatum
Prosecuting Attorney
Jasper County
Carthage, Missouri

Attention: R. A. Esterly, Assistant Prosecuting Attorney

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"A question has arisen between the Sheriff's office here in Jasper County and the Jasper County Court concerning the mileage allowance to the Sheriff. In submitting his monthly report, the Sheriff is seeking to claim mileage for each prisoner transported between Joplin and Carthage in cases where more than one prisoner is transported in the same vehicle. The County Court takes the position that the Sheriff should only be allowed mileage for the actual miles travelled insofar as his reimbursement from the County is concerned.

"Would you please give us your opinion upon this question."

Your attention is first directed to the following portion of Section 57.290, RSMo 1949, Cum. Supp. 1953, reading as follows:

"4. * * * 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 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

Hon. Stewart E. Tatum

as are allowed for conveying prisoners in like cases from one county to another, * * *; 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; * * *.

"5. These costs shall be taxed as other costs in criminal procedure immediately after conviction of any defendant in any criminal procedure. The clerk shall tax all the costs in the case against such defendant and deliver a certified copy of the same to the sheriff, who shall immediately proceed to collect such costs from the defendant, together with ten per cent on the amount of costs, so collected, as a commission for collecting the same, and the clerk shall receive of such commission an amount equal to ten per cent of the fees collected and due such clerk, and the remainder of such commission shall be retained by the sheriff; provided, that in no case shall such commission be taxed against or paid either by the county or the state; * * *."

It appears that Jasper County falls within the exception mentioned in the statute, inasmuch as under the provisions of Section 478.527, RSMo 1949, two separate courts of general criminal jurisdiction have been established in such county, and from the further fact that according to the mileage chart prepared by the Missouri State Highway Commission, the distance between the cities of Carthage and Joplin is 16 miles. It therefore becomes necessary to ascertain the fees allowed sheriffs for conveying prisoners from one county to another as mentioned in the statute.

Such fees are provided under other provisions of the same statute mentioned, and appear in the following language:

"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

Hon. Stewart E. Tatum

was committed, or who may remove a prisoner from one county to another for any cause authorized by law, * * * 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. * * *."

In view of the short distance to be traveled between the cities of Carthage and Joplin, it appears that normally no allowance will be made the sheriff except the mileage.

It has been the well-established public policy of the State of Missouri to allow officers charged with travel, including the service of process and other legal papers, and the conveying of prisoners to and from trial, or to the penitentiary, mileage based only upon necessary travel. For instance, Section 57.290, RSMo 1949, prohibits sheriffs from splitting up loads of persons sentenced to the penitentiary and requires that except in unusual circumstances all of such prisoners convicted at the same term shall be taken in one group. Section 57.280, RSMo 1949, providing for the fees of sheriffs in civil cases, allows mileage which is restricted only to one trip when more than one witness is summoned or other papers are served in the same cause on the same trip. The same is true of mileage allowed under Section 57.300, RSMo 1949, where in the service of summonses, subpoenas, etc., in criminal cases the same limitation applies. In class two counties, to which Section 57.350, RSMo 1949, is particularly applicable, we find the same limitation.

The foregoing statutes and others indicate that the General Assembly has never contemplated that a sheriff might receive mileage to be taxed as costs in several cases when he in fact performs but one service. This, we believe, is bottomed upon the principle that mileage is not meant as "compensation," but rather is in the nature of "reimbursement" to the officer for actual expenses necessarily incurred in the discharge of his official duties. In the circumstances which you have outlined,

Hon. Stewart E. Tatum

the sheriff does not incur more necessary expenses in transporting more than one prisoner between Carthage and Joplin, or vice versa, than he incurs if he transports but one prisoner. Therefore, keeping in mind the purpose for which mileage is allowed and the expressed public policy of the State of Missouri in this regard, we reach the conclusion that the sheriff may collect mileage based only upon actual miles traveled without regard to the number of prisoners actually transported.

CONCLUSION

In the premises, we are of the opinion that the sheriff of Jasper County is entitled to be reimbursed for mileage in transporting prisoners for trial or for commitment between Carthage and Joplin, or vice versa, only upon the basis of miles actually traveled, and that without regard to the number of prisoners actually transported in one trip.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton
Attorney General

WFB/vtl