

October 28, 1974

OPINION LETTER NO. 303

Answer by Letter - Burns

Honorable Garnett A. Kelly
State Representative, District 143
Rural Route 2
Norwood, Missouri 65717

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Dear Representative Kelly:

This letter is in response to your question asking whether sheriffs in third and fourth class counties are, under provisions of Senate Bill No. 378 of the 77th General Assembly, entitled to fifteen cents per mile for serving civil process as provided in Section 57.280 and fifteen cents per mile for travel in serving certain criminal process and making investigations of persons accused of or convicted of criminal offenses as provided in Section 57.430.

House Committee Substitute for Senate Bill No. 378 of the Second Regular Session of the 77th General Assembly, effective August 13, 1974, repealed six sections of the Missouri statutes and reenacted six new sections relating to the same subject.

Section 57.280 of Senate Bill No. 378, provides in part, as follows:

"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

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not be charged for more than one witness
subpoenaed or venire summons or other writ
served in the same cause on the same trip.
.15"

This fee, that is, the fifteen cents per mile provided for in serving civil process, is by virtue of Sections 57.407 and 57.409, RSMo, retained by the sheriff in third and fourth class counties, as part of his compensation and is not paid, as are other fees, into the county treasury.

Such fee constitutes compensation to the sheriff. It is therefore our view that such sheriffs during their present terms of office are not entitled to the increase from ten cents per mile, as provided for prior to the effective date of Senate Bill No. 378, to fifteen cents per mile because of the provisions of Section 13 of Article VII of the Constitution of Missouri providing that the compensation of no officer shall be increased during his term of office. See, State ex rel. Emmons v. Farmer, 196 S.W. 1106 (Mo. Banc 1917).

You also inquire as to the provisions of Section 57.430(1) of Senate Bill No. 378. Such section provides as follows:

"1. 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 fifteen cents per mile, and actual expenses not to exceed fifteen cents per mile for each mile traveled, the maximum amount allowable to be three hundred 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. When mileage is allowed, it shall be computed from the place where court is usually held, and when court is usually held at one or more places, such mileage shall be computed from the place from which the sheriff or deputy sheriff travels in performing any service. When two or more persons who are summoned, subpoenaed, or

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served with any process, writ, or notice, in the same action, live in the same general direction, mileage shall be allowed only for summoning, subpoenaing or serving of the most remote."

Such section formerly provided for a payment not to exceed ten cents per mile for actual and necessary expenses for each mile traveled in serving warrants or any other criminal process and actual expense not to exceed ten cents per mile for each mile traveled in the performance of their official duties in connection with the investigation of persons accused of or convicted of a criminal offense with a maximum payable of two hundred dollars per month. Senate Bill No. 378 increased this mileage allowance amount to fifteen cents per mile.

Section 57.430 does not provide for mandatory payment of fifteen cents per mile. The statute provides for allowances for reimbursable expenses payable to the sheriff in addition to his salary. These allowances are for "actual and necessary expenses . . . not to exceed fifteen cents per mile." This mileage allowance does not constitute compensation and an increase in such mileage allowance is not prohibited during the term of office by provisions of Section 13, Article VII of the Missouri Constitution. As a general rule, significance and effect must be given to every word and phrase of a statute. 73 Am.Jur.2d Statutes §250 (1974); Burrow v. Finch, 431 F.2d 486 (8th Cir. 1970); Pryor v. David, 436 S.W.2d 3 (Mo. 1969); State v. Ralston Purina Co., 358 S.W.2d 772 (Mo. Banc 1962). Interpreting Section 57.430, V.A.M.S., to require payment of fifteen cents per mile for each mile traveled in serving warrants or other criminal process and for each mile in performance of investigatory work would require ignoring the words "actual and necessary expenses" and "not to exceed." Thus, while fifteen cents per mile may be paid, Section 57.430 mandates only an allowance for actual and necessary expenses not in excess of fifteen cents per mile.

Very truly yours,

JOHN C. DANFORTH
Attorney General