

PROHIBITION:

Fees of enforcement officers for executing search warrants.

4514 RS Mo 1929.

September 7, 1933

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Honorable Elbert L. Ford  
Prosecuting Attorney  
Kennett, Missouri

Dear Mr. Ford:

This Department acknowledges receipt of your letter of August 1, along with two other inquiries which have been answered. The subject of the present inquiry is as follows:

"Please advise me at your earliest convenience if a Sheriff or Constable is entitled, under Section 4514, Revised Statutes 1929, to mileage and fees for serving liquor search warrants where they do not find any whiskey or other intoxicating liquors and the return shows that they have made the search but failed to find anything.

Some of the peace officers in this County have in the past few years been making applications before a Justice of Peace and have been obtaining warrants and searching premises and the County Court has been refusing to pay them mileage or fees on the same because they do not feel it their responsibility."

The section to which you refer, 4514, R. S. Mo. 1929, is as follows:

"All officers whose duty it is to issue or execute search warrants as provided for herein, shall be entitled to the same fees and mileage as such officers are now or may

hereafter be entitled to for similar services in the issuance and execution of criminal processes, the same to be taxed and collected as other criminal costs are taxed and collected."

In Section 4511 R. S. Mo. 1929, the part to which we wish to refer later is as follows:

"The attorney-general of the State of Missouri, or the prosecuting attorney of any county, or any prohibition enforcement officer, is hereby empowered to file in the circuit court, criminal court, court of criminal correction, or any other court having criminal jurisdiction in the county, or before the judge thereof in vacation, or justice of the peace, an application for a search warrant, which application shall be by petition setting forth substantially the facts upon which the same is based, describing the place to be searched and the thing or things to be seized as nearly as may be, which petition shall be verified by the oath of the officer filing the same. If it shall appear to the satisfaction of the court in which said petition is filed, or the judge thereof in vacation, or justice of the peace before whom said petition shall be filed, either from the facts set forth in said petition or from evidence heard thereon, that there is probable cause to believe that intoxicating liquor is being unlawfully manufactured, sold, stored or kept in any building, structure, or at any place described in said petition, within said county or transported, as in this chapter defined, contrary to the provisions of this chapter, or that thereat or therein is being used or kept any still, doubler, worm, worm tub, mash, mash tub, fermenting tub, vessel, fixture or equipment, or any part or parts thereof used or fit for use

in the unlawful manufacture or production of intoxicating liquor, it shall be the duty of such court or such officer before which or whom said petition was filed, to issue or cause to be issued a search warrant thereon, which search warrant shall substantially recite the facts set forth in said petition\*\*\*\*."

Under the above section the Justice of the Peace enters on his docket the filing of the petition and his judicial finding. The other pertinent portion of the statute relating to the duties of the officer in making his return on a search warrant is as follows:

"\*\*\*\*Provided further, that any officer executing a search warrant as herein provided shall forthwith make his return thereon to the court or officer issuing said search warrant of the manner and date of his execution thereof, showing what, if anything, was seized and held or seized and destroyed by said search, together with the name of the owner or owners, if known, of the things seized, and if not known, then the name or names of the person or persons appearing to be in charge or control thereof, and shall attach to said return as a part thereof an accurate list or inventory of the article and things so seized; and in case of the seizure of any such articles, things, or equipment, or intoxicating liquor which said officer may have found in use or fit for use without the aid of a search warrant as hereinbefore provided, he shall immediately file a list of the things so seized with the prosecuting attorney of the county in which the same were found, and shall hold the things so seized for disposition in accordance with the provisions of this chapter\*\*\*\*\*."

You state that the costs are sought only in cases in which under the search warrant no evidence was taken or found, hence, we assume that when no evidence was taken or found that the same was not followed by prosecution and the matter was automatically dropped.

Honorable Elbert L. Ford

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Corpus Juris, Volume 56, page 1209, paragraph 109,  
states:

"\*\*\*\*that the issuance of a search warrant is a judicial action, function and proceeding, although it is said not to require more judicial power than does the issuance of criminal warrants generally."

It is the opinion of this Department that under Section 4514, supra, that it was the intention of the Legislature for the prohibition officers to receive fees for executing search warrants in prohibition cases and that the officers should receive the fees in the amounts as set forth in Sections 11791 and 11792 R. S. Mo. 1929.

Yours very truly,

OLLIVER W. NOLEN  
Assistant Attorney General,

APPROVED:

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ROY McKITTRICK  
Attorney General.

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