

SHERIFF: Fees of Sheriff of Macon Co. in extradition proceedings.

September 13, 1933. ✓

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Your Excellency  
Governor Guy B. Park,  
Executive Office,  
Jefferson City, Mo.

Dear Governor:

Attention: Hon. Woodson Cockrill,  
Executive Secretary.

This department acknowledges receipt of your request, handed to General McKittrick, for an opinion in regard to the fees of Hon. B.R. Williams, Sheriff of Macon County, Missouri in conveying one Clarence Dowell from Leavenworth, Kansas to Macon, Missouri.

We are not undertaking to pass upon the legality of the fees as contained in the attached messenger's return, as under Sec. 3588, R.S. Mo. 1929 the expenses of the messenger are ascertained by the Governor, and shall, upon his authorization, be paid out of the State Treasury (the statute will be quoted later in full). Therefore, the burden of determining whether or not the fees of a messenger are fair and legal devolves entirely upon the Governor. We note, however, in the items of fees of the messenger, that being a sheriff, it is obvious he has undertaken to claim fees in his official capacity rather than as a messenger. The Governor has the power to appoint and to make his agent any one he so desires, and because it is the usual practice to appoint the sheriff as agent and messenger, does not give the sheriff the right to charge his statutory official fees.

Under Sec. 3587, R.S. Mo. 1929, the same being as follows:

"Whenever the governor of this state shall demand a fugitive from justice from the executive of another state or territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the state, to some messenger, commanding him to receive such fugitive and convey him to the sheriff of the county in which the offense was committed, or is by law cognizable."

it will be noted that the phrase "to some messenger" is the sole person under the command of the Governor to receive the fugitive and convey him to the sheriff of the county in which the offense was committed. The statute is silent as to any guard or to any additional assistant that the messenger might take upon himself to include.

Under Sec. 3588, mentioned above, if the messenger should demand or should be in need of a guard or any other unusual expense which he anticipates he might incur in conveying the prisoner, the matter should first be taken up with the Governor and he should have the Governor's approval or sanction, or he should be able to convince the Governor that the item in question was essential.

As to the other items in the messenger's return, we note nothing unusual and the same appears to be legitimate expense. However, as stated above, the allowance of all the items is wholly within the discretion of the Governor.

This department has heretofore rendered an opinion to Hon. Walter G. Stillwell, Prosecuting Attorney, Hannibal, Missouri, one question of which related to the fees of a messenger, and the same is being incorporated and made a part of this opinion. The said opinion follows:

"Paragraph 4 of your letter is as follows: 'In extradition proceedings if the sheriff is appointed messenger of the State of Missouri, is he entitled to any compensation other than actual and necessary expenses in returning the prisoner to his county?'"

Under Sec. 3588, R.S. Mo. 1929, expenses of the messenger are always within the discretion of the Governor of the State, said section being as follows:

"The expenses which may accrue under the last section, being first ascertained to the satisfaction of the governor, shall, on his certificate, be allowed and paid out of the state treasury, as other demands against the state."<sup>4</sup>

This section does not make it mandatory on the sheriff to be the messenger. The Governor could appoint any other person he desired; therefore, the various fees which the sheriff in his official capacity might claim are not applicable. In the case of

State ex rel v. Allen, 180 Mo. 27, the Court said:

\*Under the statute quoted (Sec. 2744 R.S. Mo. 1899) the duty of determining the question of the compensation and expenses of such messenger is vested solely in the Governor and he is the head of a coordinate branch of the government, and all his acts as such are in that capacity; hence, he cannot be interfered with in the discharge of his duties by the courts.\*

In making out the expenses incurred by the sheriff as messenger, it is the opinion of this department that he should include the number of miles traveled, claiming said mileage, the expenses of the prisoner, his own expenses, the number of miles by rail, and any other legitimate expenses and fees which the conscience of the sheriff or messenger might prompt him to include. In the last analysis, it will not matter what the sheriff or messenger wishes to charge, but it will be wholly within the discretion of the Governor as to what amount he shall receive."

It is the opinion of this department that the matter of fees of messengers is wholly within the discretion of the Governor and this department, under statutes and the decision above quoted, could not usurp or infringe on that power by fixing the fees; therefore, we are only making advisory suggestions.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK,  
Attorney General

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