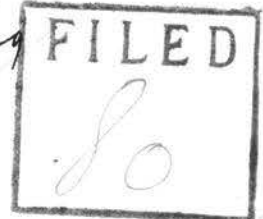


Applicability of Section 11777
and Section 11791 as to fees of
Constables.

CONSTABLE FEES:

May 20, 1933.



Mr. Henry C. Salveter,
Prosecuting Attorney
Sedalia, Missouri.

Dear Mr. Salveter:

This Department acknowledges receipt of your letter dated May 15, 1933, as follows:

"The Constable of Sedalia Township some time ago made a trip outside of Pettis County to apprehend a criminal. In filling out the return on his warrant, he placed his mileage at \$.10 per mile each way, in traveling to arrest the criminal and returning him to Sedalia. The Circuit Clerk in making up the fee bill refused to allow the Constable \$.10 per mile each way, but placed his fee at \$.05 per mile for each mile actually traveled. The Constable claims that he is entitled to \$.10 for each mile traveled.

The Circuit Clerk in answering the contention of the Constable that Section 11777 determined the fees, cited to the Constable Section 11791 as his authority for allowing the Constable only \$.05 per mile.

I wish you would please inform me which of the above sections determine the fees that the Constable is entitled to in the foregoing situation, in order that I might satisfy him and also the Circuit Clerk in this matter."

Section 11777 R. S. Mo. 1929, among other things, provides that Constables shall be allowed fees for their services as follows: "and for every mile traveled in taking a criminal to jail and returning therefrom, provided the distance so traveled be more than five miles, the sum of per mile \$.10. For each mile actually traveled in serving any process, \$.10.

Section 11791 R. S. Mo. 1929, regulates the fees to be allowed sheriffs, county marshalls or other officers

in criminal cases, provides, among other things, as follows:

"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 was committed, or who may remove a prisoner from one county to another for any cause authorized by law - - - and five cents per mile for every mile necessarily traveled in going to and returning from one county to another - - - ."

We have quoted what we deem the pertinent provisions of the Statutes.

It is the opinion of this Department that Section 11777 is a general section fixing the fees of Constables for services performed within their county, but that Section 11791 is a special section which over-rides the provisions of Section 11777 when the facts bring the question under the latter Section. It is our opinion that your inquiry is answered by the provisions of Section 11791, which fixes the mileage which the Constable is allowed to charge for the service inquired about at the rate of \$.05 per mile and not \$.10 per mile as urged by the Constable.

It is, therefore, the opinion of this Department that the Circuit Clerk is right in allowing only \$.05 per mile to the Constable in this particular case for the service performed.

Very truly yours,

Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S