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MARSHALL SUPREME COURT - Mileage fees -

When prisoner escapes

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April 19, 1934.



Hon. Guy B. Park,
Governor of Missouri,
Jefferson City, Missouri.

Dear Governor:

Acknowledging your request of April 18th for an opinion which was as follows:

"May I ask your opinion as to whether or not the Marshall of the Supreme Court is entitled to mileage and fees as messenger under the following statement of facts:

"The Supreme Court affirmed the sentence of a felon who was on bond at the time sentence was affirmed. The defendant had fled the State and the bond was forfeited. He was apprehended in the State of California and requisition issued to the Governor of that State and by him honored. The Marshall of the Supreme Court was appointed by me as messenger to return the prisoner. He went to California and obtained the custody of the prisoner. Enroute from there to Missouri in a motor car with the prisoner, the prisoner escaped some place in Texas and has not since been apprehended."

The sections of the statutes pertinent to this question are sections 3587 and 3588 of the Revised Statutes of Missouri for 1929 and are in words and figures as follows, to-wit:

"Sec. 3587. Messenger, when to be appointed.- 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. R. S. 1919, p. 3930.

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" Sec. 3588. Expenses under preceding section, how paid. - 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. (R. S. 1919, p. 3931.)

The question presented has never been passed on by our appellate courts nor can we find any similar case in the United States. The only time the courts of Missouri have construed either section was in *State ex rel. v. Allen*, 180 Mo. 27, when they held that the governor must determine how much shall be paid before the auditor can lawfully issue a warrant.

The cases decided by the other appellate courts of the United States have been determined by some section of their statute involved and which is not in the words of our statutes.

Since our statutes have never been construed upon the points presented by your request it is our purpose to construe them in the manner provided by law.

That part of section 655 of the Revised Statutes of Missouri for 1929 applicable to this opinion is as follows:

"* * *First, words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import;* * *"

The messenger appointed here was the agent of the Governor to receive and convey the prisoner. The legislature intended that he should not receive any profit from the execution of the Governor's warrant because they fixed as his only compensation actual expenses. Considering the hazards of travel, the time and distance involved we do not feel that the legislature intended that the messenger should be penalized by the loss of his expenses because of an escape, unless

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it might be shown that he was grossly negligent, and in the absence of any statutory requirement of delivery prior to payment we feel that the legislature took into consideration the fact that a prisoner might be killed, rescued or escape through no fault of the messenger.

Conclusion.

The opinion of this office is that since there are no technical words or phrases in these statutes they must be construed in their ordinary meaning and the plain intent was to provide that the messenger in the performance of his duty in the execution of the Governor's warrant, should travel at the expense of the state. It is not reasonable to believe that a messenger as above provided be expected to shoulder necessary expenses of trips where the prisoner escapes his custody. The statutes do not provide any compensation for his time and trouble other than expenses and certainly he should not be an insurer of delivery of his prisoner.

If the legislature had intended the messenger to be an insurer of the safe delivery before expenses be legally allowed they should have so provided in unequivocal terms. We find that the legislature did not so provide but only provided that "expenses be ascertained to the satisfaction of the governor."

It follows then that the governor in his discretion can allow necessary expenses to a messenger in extradition matters and this is true even though the prisoner may escape.

Respectfully submitted,

Roy McKittrick
Attorney General.