

SHERIFFS - Fees for notifying petit jury; Fees for notifying judges of election; Officer has no jurisdiction outside of Missouri; Fees for delivering ballots.

February 4, 1935



Honorable Thomas Gaines, Sheriff
Howard County
Payette, Missouri

Dear Sir:

In answer to your letter of January 14, 1935 for an opinion on four separate items, we will, for convenience, subdivide this opinion and answer each item separately. Your request is as follows:

"I would like to have an opinion on the following:

"First: After drawing petit jury, what is fee for notifying them?"

"Second: After Judges of election have been drawn, who notifies them and what is the fee?"

"Third: Does Constable have right to go outside of State for a prisoner?"

"Fourth: What would be a reasonable fee for Sheriff delivering ballots over the county at the different precincts for an election, as statutes say the county court shall allow a reasonable fee.

"An opinion on the above would be greatly appreciated, as I want to know just what the duties of sheriff are, and also the fees."

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I.

Fee of Sheriff for Notifying Petit Jury.

In answer to this, we call your attention to Section 8758, R. S. Mo. 1929, which imposes the duty upon the sheriff to notify petit jurors by the following language:

" * the clerk of the court for which the jury is drawn shall immediately thereafter issue a summons to the sheriff of the county, directing him to summon the persons thus drawn as petit jurors * "

For the above service, two sections of the statute are involved, Section 11789, R. S. Mo. 1929 and Section 11791, R. S. Mo. 1929.

Section 11789 provides:

"Fees of sheriffs shall be allowed for their services as follows:

"For summoning a standing jury...\$8.40

* * * * *

"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 not be charged for more than one witness subpoenaed or venire summons or other writ served in the same cause on the same trip\$.10"

Section 11791 provides:

"Sheriffs, county marshals or other officers shall be allowed fees for

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their services in criminal cases
and for all proceedings for contempt
or attachment as follows:

* * * * *

"For summoning a petit jury and calling
same at the trial. \$1.00"

From the above and foregoing statutes, it is
apparent that the Legislature intended reasonable com-
pensation to the sheriff for summoning a petit jury of
twenty-four persons, representatives from each township
in the county, and therefore intended that he should re-
ceive the flat fee of \$8.40 for such service, and did not
intend that the \$1.00 fee provided for in Section 11791
should be for such service, but intended that the \$1.00
fee should be for summoning and calling the petit jury in
court on each day of court in which the petit jury are
required to be present.

It is, therefore, the opinion of this office
that the sheriff is entitled to a fee of \$8.40 for sum-
moning the panel of twenty-four petit jurors, plus 10¢
per mile for each mile necessarily traveled in summoning
said jury, as provided for in Section 11789, R. S. Mo.
1929.

II.

What are the Sheriff's Fees for Notifying
Judges of Election

We find from an examination of the statutory
laws of this state that a county court is a court of
record, Section 1826, R. S. Mo. 1929; that under Section
1844, R. S. Mo. 1929 it has power "to issue all writs
which may be necessary in the exercise" of its respective
jurisdiction.

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Section 10209, R. S. Mo. 1929 provides that with reference to the election, the county court shall select and appoint the number of judges required to hold the election, taking one-half of the judges so appointed from each of the lists submitted by the two leading political parties.

Section 10210, R. S. Mo. 1929 provides that before the judges enter upon the duties of election judge, they shall take an oath which is set out in detail in this section. The law provides when the polls shall be opened and closed, and under Section 10194, R. S. Mo. 1929:

"The judges of each election hereafter to be held, general or municipal, shall open the polls at six o'clock in the morning and continue them open until seven (7) o'clock in the evening, unless the sun shall set after seven (7) o'clock, when the polls shall be kept open until sunset, * "

Under the 1933 Laws, p. 239, it is provided:

"The judges of election shall designate two of their number, not of the same party, whose duty it shall be to have charge of the ballots and to furnish them to the voters in the manner hereinafter provided."

A new section, Section 10211, Laws 1933, p. 239, also provides that the judges shall appoint clerks of election who,

" * before entering on the duties of their appointment, shall take an oath or affirmation, to be administered by one of the persons appointed or elected judges of the election, * "

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It is apparent from the above and foregoing synopsis of election law that the Legislature, by the use of the terms "select and appoint" found in Section 10209, R. S. Mo. 1929, meant that the county court should notify such persons of the action of the county court in selecting them to be an election judge, although a specific statute on this matter has been omitted by the Legislature. It has been made the duty of the sheriff to attend each court held in his county, Section 1870, R. S. Mo. 1929.

Section 1845, R. S. Mo. 1929, in part, provides:

"Where there is no sheriff or other ministerial officer qualified to act, the court, or clerk thereof in vacation, may appoint one or more persons to execute its process and perform any other duty of such officer, who shall be entitled to such fees for their services in each cause as are allowed by law to sheriffs in like cases."

It is apparent from this section that any writ of either selection or election of any election judge by the county court is a matter of court record and a proper notice of such action should be served upon the election judge so selected. It was not the intent of the lawmakers that the county court, some county judge or the clerk of a county court should attempt to serve its decisions by mail or some other method. The intention was to have the sheriff in attendance on the county court to serve or carry out any notices or any other matters it had to serve, and for such services the Legislature, in Section 11789, R. S. Mo. 1929 provided a fee of fifty cents for serving every notice or rule of court, to be paid to the sheriff, and also mileage at the rate of ten cents per mile for each mile actually traveled in serving such writ or notice.

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III.

As to the Right of Constable to go Outside of State
For a Prisoner.

No officer of the State of Missouri has any jurisdiction or authority outside of the State except such as may be specifically delegated by State and Federal law.

In this connection, we call your attention to Sections 3587 and 3588, R. S. Mo. 1929, which are as follows:

Section 3587:

"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."

Section 3588:

"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."

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You will note that the sheriff does not perform any of the duties of messenger in any official capacity he may hold in the State of Missouri, but performs such services in the official capacity of an appointed agent or messenger of the Governor of the State of Missouri. You will note that under the provisions of Section 3588 that before any expenses can be allowed to a messenger they must meet "the satisfaction of the Governor". In State ex rel. v. Allen, 180 Mo. 27, l.c. 31, the court, speaking of the meaning of such in Section 3588, R. S. Mo. 1929 (then Section 2744, R. S. 1899) said:

" * 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 co-ordinate branch of the government, and all his acts as such are in that capacity, and hence he can not be interfered with in the discharge of his duties by the courts. The relator has performed a service for which he is entitled to be paid. * But this court has no power in the premises. The Governor alone has the power to determine how much shall be paid, and to order it paid. Until he does so the Auditor can not lawfully issue a warrant therefor."

A constable or any other person could be selected by the Governor and appointed as a messenger, and when so selected becomes the agent of the State of Missouri for the performance of such duties as are delegated to messengers. The constable in that situation would not perform any duties by virtue of being constable, but by virtue of having been appointed messenger of the Governor of the State.

Furthermore, under the provisions of Section 11405, R. S. Mo. 1929 relating to the duties of the State Auditor, the expense accounts of a messenger of the Governor in returning a fugitive to the State of Missouri cannot be paid

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until the head of the department (the Governor) shall fix the expense account at a just and reasonable figure.

It is, therefore, the opinion of this office that no officer has a right to go beyond the boundaries of the State for the purpose of returning a prisoner to this State for trial except where such officer, sheriff, constable, or other person, is appointed a messenger by the Governor. No compensation is fixed for such duty, except that which the Governor may see fit to allow.

IV.

Fees of Sheriff for Delivering Ballots

Under the provisions of Section 10305, R. S. No. 1929, ballots prior to the election shall be delivered to the judges of the election of each election district in the county by the sheriff, who shall be allowed a reasonable compensation for his services, to be provided for by the county court. The question of what constitutes a reasonable compensation is a matter of fact for the county court and the sheriff to settle between themselves. In the event the sheriff presents a bill in a specific amount for such "reasonable services", the county court does not allow it, an ample remedy is provided by Section 2093, R. S. No. 1929 giving the right to the sheriff to appeal to the circuit court from the decision of the county court denying his account for services.

Respectfully submitted,

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APPROVED:

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