

SHERIFF'S FEES - Entitled to no fees for attempting
to serve capias.

November 14, 1935

11-15

Honorable E. A. Tucker
Sheriff of Pike County
Bowling Green, Missouri



Dear Sir:

We have your request of October 23,
1935 for an opinion, which request is as fol-
lows:

"I would like to have your opinion
in regard to Sheriff's mileage,
for example I refer you to cost
bill #13792 State -vs- Bernard
McLain, my Prosecuting Attorney
gave me a Capias on McLain at
that time in St. Louis, Mo., at
police station, I made trip to
St. Louis for him but he was re-
leased to Sheriff of Macon County,
Macon, Missouri. Then I made
trip to Macon for him and brought
to my county, Bowling Green, Mo.
I returned my Capias 388 miles
traveled which is correct. I
received \$15.00 mileage, State
allowing me 200 miles at .05 per
mile and prisoners mileage of
100 miles at .05. Now, I don't
think a sheriff is supposed to
work and drive all time apprehend-
ing prisoners and not be paid for
same, if State is not liable for
it, is our County? This is an
important matter with the Sheriff,
as it is impossible to keep up
unless he can collect his fees.
Please let me hear from you. Our
county can take care of things of
this kind if I have your opinion
as such."

#2 - Honorable E. A. Tucker

The fees of a sheriff are set out in Section 11791, R. S. Mo. 1929, which, among other things, provides as follows:

"Sheriffs, * shall be allowed fees for their services in criminal cases * as follows:

For serving and returning each capias, for each defendant . . \$1.00

* * * * *

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, * shall be allowed * one dollar and twenty-five cents per day for every day he may have such person under his charge, when the number of days shall exceed one, and five cents per mile for every mile necessarily traveled in going to and returning from one county to another, * * "

We find no statute in this state which authorizes the payment of mileage or compensation for an unsuccessful attempt to serve a capias.

We quote the general rule from Section 1195, 57 C. J., p. 1130:

"In a majority of jurisdictions a sheriff is not entitled to, as a matter of right, and cannot recover, mileage for travel in attempting to serve process or make an arrest which was not actually or lawfully served or made, and even though he ultimately served the process or made the arrest, he cannot charge mileage for previous unsuccessful attempts; * "

#3 - Honorable E. A. Tucker

Such is the well settled rule in this state. We quote from a case involving compensation of a sheriff, State ex rel. v. Brown, 146 Mo. 401, l.c. 406:

"It is well settled that no officer is entitled to fees of any kind unless provided for by statute, and being solely of statutory right, statutes allowing the same must be strictly construed. State ex rel. v. Wolford, 116 Mo. 220; Shed v. Railroad, 67 Mo. 687; Gannon v. Lafayette Co., 76 Mo. 675. In the case last cited it is said: 'The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform, as such officer, unless the statute gives it. When the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services.' Williams v. Chariton Co., 85 Mo. 645."

When the words of a statute are construed in the plain and ordinary sense, as is required by Section 655, R. S. Mo. 1929, and salary and fee statutes are strictly construed, then it becomes apparent in this case that the sheriff is not entitled to mileage at the rate of 5¢ per mile for attempting to serve the capias on a prisoner in another county, and it is the opinion of this office that before the sheriff can recover such compensation, he must actually serve the capias and remove the prisoner from the county in which he was arrested to the county in which he is to be tried.

Respectfully submitted,

APPROVED:

FRANKLIN E. RHAGAN
Assistant Attorney General

JOHN W. HOFFMAN, JR.
(Acting) Attorney General