

CONSTABLE--FEES: Constable of Audrain County not entitled to fee for attending Justice Court.

5-18

May 16, 1935.



Mr. David W. Walker
Constable, Saling Township
Audrain County
Centralia, Missouri

Dear Sir:

Your request for an opinion dated May 3, 1935, is as follows:

"As Constable of Saling Township in Audrain County, I would like to know if I am entitled to mileage when I attend Justice Court.

"There seems to be a difference of opinion among the Justices here.

"Will you please let me hear from you at your earliest convenience."

The population of Audrain County is 22,077 as of the last census. We will confine our opinion to the law regulating fees of constables in townships having a population of less than 75,000 inhabitants.

When and how a constable can collect fees is provided for generally in Section 11776 R. S. Mo. 1929. Said Section reads:

"The several officers hereinafter named, and jurors and witnesses, shall be allowed such fees for their services rendered in discharging the duties imposed upon them by law as are hereinafter provided, and the clerks of the courts of record and the presiding officers of courts of inferior jurisdiction shall strictly examine the accounts of all fees accruing during the progress of any civil suit pending in their said courts,

and shall correct the same if wrong in any manner, and shall thereupon enter the amount thereof upon their fee books, and the said clerk and the other officers before mentioned shall, after the term of the court at or before which the services were rendered, if required by the party entitled to fees, certify a fee bill of such services and deliver the same to the sheriff or other officer of the proper county charged by law with the service of executions, who shall proceed forthwith to collect the same; and if the person or persons and their sureties for costs properly chargeable with such fees shall neglect or refuse to pay the amount thereof, and costs for issuing and serving the same, within thirty days after demand of said sheriff or other officer aforesaid, the same shall be levied of the goods and chattels, moneys and effects of such persons or their sureties, in the same manner and with like effect as on an execution; and if any such officer shall neglect or refuse to levy and collect such fees, or to pay over the money collected thereon to the person entitled thereto, within three months after such fee bill shall have been delivered to him, the court wherein such fees accrued shall, upon ten days' previous notice given to such officer, on motion, enter up judgment against him and his sureties for the amount of the fee bill, interest and costs thereon. All provisions of this section concerning the collection of fee bills shall also apply to fee bills issued by justices of the peace."

Section 11777 R.S. Mo. 1929, provides mileage as a fee as follows:

"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."

In addition to the general Statute above quoted there are a couple of special Statutes providing mileage for a particular official service rendered by constables.

Section 12801 R. S. Mo. 1929, provides for a constable's mileage fee when he restrains animals running at large, and reads:

"The justice of the peace shall be allowed a fee of fifty cents for issuing the notice and swearing the appraisers, and the constable or person serving the notice shall be allowed a fee of thirty-five cents for each appraiser notified and three cents per mile as mileage to and from the place of service, and each appraiser shall be allowed a fee of fifty cents, which shall be paid by the owner of such stock before he shall be entitled to take such stock away: Provided, that if said appraisers assess the amount of damages and compensation for taking up, keeping and feeding said animal or animals, at a less amount than the amount claimed by the taker-up on the written statement delivered to the owner, it shall be the duty of the taker-up of said animals to pay said costs."

Section 12532 R. S. Mo. 1929, provides for a constable's mileage fee in diseased live stock proceedings, and says:

"Sheriffs, constables county judges, or other county or city officers, shall receive such fees and mileage for the performance of their duties under this article as are allowed by law, to be paid by the county. The expenses of the agents of said board shall be paid by the said board."

The above Sections are the only Sections of law which provide a mileage fee to constables while performing the duties of office.

In the case of State ex rel. Troll v. Brown, 146 Mo. 401, l. c. 406; 47 S. W. 504, the sheriff of St. Louis brought an action of mandamus to compel the City treasurer to pay him a fee for attending Court as the Statutes and Constitution require. The Court audited and allowed the fee, but the treasurer refused to pay it on the grounds that nothing in the Statutes authorized the fee. The Trial Court issued the mandamus and the Supreme Court in reversing the action of the Trial Court said:

"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."

CONCLUSION

We have been unable to find any Statute allowing a Constable in Audrain County a fee for mileage when attending Justice Court.

We are of the opinion that the allowance of a mileage fee to the constable for attendance to official duties in the Justice Court above mentioned would be illegal and void. To be entitled to this mileage fee for attendance there must exist a Statute supporting the fee, in the absence of which the presumption must be indulged that the service are gratuitous.

Yours very truly

APPROVED:

WM. ORR SAWYERS
Assistant Attorney General.

ROY MCKITTRICK
Attorney General