

ELECTIONS - Fees: Messenger entitled to 5¢ per mile round trip in delivering election returns to Secretary of State.

December 29, 1936.

12-30
FILED

Honorable H. Sam Priest,
Clerk of Circuit Court,
Eighth Judicial Circuit of Missouri,
St. Louis, Missouri.

Dear Sir:

We are in receipt of your inquiry, which is as follows:

"Shortly after the election on November 3, 1936, the returns of the election held here in the City of St. Louis were ordered entered of record by the Circuit Court of this city and I immediately sent said election returns to Jefferson City to Secretary of State by messenger. I sent the election returns by messenger for the reason that they were so bulky that it would have been impossible to have enclosed them in envelopes as provided by Section 10172 of the Revised Statutes of Missouri of 1929.

"Under Section 10171, R.S. 1929, I mailed a bill to the State Auditor for the statutory allowance of five cents per mile for each mile covered, the said messenger going to and coming from Jefferson City, Missouri, the mileage taken being that of the railroad between here and Jefferson City. The State Auditor notified me that he had forwarded my bill to the Secretary of State and on December 5, 1936, I received a letter from Honorable Dwight H. Brown in which he informed me that he could not pay me for the expense of conveying said election returns to Jefferson City as provided by Section 10171, supra. I am enclosing, herewith, a copy of said

letter of said Secretary of State advising me that said bill will not be paid.

"I do not like to bother you over such a small item, but I believe that you can determine whether or not said bill should be allowed very summarily by reading Section 10171 and I should like to be able to reimburse the deputy from this office who conveyed said election returns to Jefferson City for the expense to which he was put by said trip."

Section 10166, R.S. Mo. 1929 provides that at stated times elections shall be held for various state officials; likewise does Section 10167. Section 10168 provides that it is the duty of the Secretary of State to lay before the House and Senate the list of members elected thereto. Section 10169 provides for the method of casting up the returns. Section 10170 provides a method for selection in case of a tie.

Section 10171, R.S. Mo. 1929 is as follows:

"There shall be allowed to the clerks for sending or conveying the returns of any senatorial election into any other county in the district, as occasion may require, and also to any messenger who may be employed to convey the returns of any election required by law to be made to the Secretary of State, at the rate of five cents per mile going and returning."

Section 10172 provides that the clerks of the several courts to whom a transcript of the votes is directed shall, within two days after the time limited for the examination of the polls, deliver to the post office a fair abstract of the votes given in their respective counties, by precincts, for members of Congress, Governor, Lieutenant Governor, etc., and provides a method of preparing the same for mailing.

Section 10173 authorizes the Secretary of State to send a special messenger in order to procure the election returns if they are not received promptly by him otherwise. Section 10174 places a penalty on the clerk for failure to properly transmit said

election returns.

Section 10175, R.S. Mo. 1929 provides that the Secretary of State, in the presence of the Governor, shall open the returns and cast up the votes given for all candidates for any office except certain ones therein named, and issue commissions for them.

You state in your letter that the election returns of a regular election were forwarded by messenger from St. Louis to the Secretary of State at Jefferson City. It will be noted that Section 10171 provides "There shall be allowed to the clerks for sending * * * any messenger who may be employed to convey the returns of any election required by law to be made to the Secretary of State at the rate of five cents per mile going and returning." This latter provision cannot refer to the messenger provided for by Section 10173 because the clerk does not send that messenger, but on the contrary the Secretary of State does.

It appears that the returns of this election "are required by law to be made to the Secretary of State" and that you elected to send them by messenger rather than by the postal facilities because it was more economical to send them by messenger. It appears to us that Section 10171 refers to just such a situation as is presented by your inquiry, and while ordinarily the returns are transmitted by mail, yet the clerk may use a sound discretion in deciding to send such returns by messenger, and when so done, the provisions of Section 10171 apply; therefore, such messenger is entitled to his expenses in going and returning at the rate of five cents per mile therefor.

Respectfully submitted,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

DW:AH