

SHERIFFS: Sheriff's mileage fee for taking committed prisoner from one place to another within Clay County.

March 11, 1936.

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Honorable James S. Rooney
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Sir:

We acknowledge your request for an opinion dated February 28th, which reads as follows:

"I would be pleased to have an expression of your opinion as to the payment of costs in a criminal case on the following statement of facts:

"A state warrant is issued by a justice of the peace in Excelsior Springs, Clay County, Missouri, and is delivered to the sheriff of the county. The sheriff makes the arrest and brings the defendant before the justice of the peace. He is arraigned, bond set for his appearance, which he fails to make, and the justice issues a commitment to jail. The sheriff then takes this commitment and brings the prisoner to the county jail at Liberty to hold him until the trial day. On the trial day he returns the prisoner to Excelsior Springs for trial. The prisoner is convicted of a misdemeanor and sentenced to serve a term in jail. The justice then issues a commitment to jail and the sheriff returns the prisoner to Liberty. Is the sheriff entitled to his mileage for the round trip on the commitment for trial and his mileage back to Liberty on the commitment to jail?"

If the sheriff of Clay County is entitled to any fee for attending upon a Justice Court or serving process for a Justice Court, there must be a statute authorizing such a fee. See State ex rel. v. Brown, 146 Mo. 401; 47 S. W. 504.

Section 11792 R. S. Mo. 1929, provides:

"Sheriffs, county marshals or other officers shall be allowed for their services in criminal cases and in all proceedings for contempt or attachment as follows: Ten cents 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."

CONCLUSION.

We are of the opinion that under the facts of your letter the sheriff is entitled to mileage as provided in Section 11792, R. S. Mo., supra. Other statutes relating to sheriff's mileage are not applicable to your facts, that is, he is entitled to ten cents for each mile actually traveled under order of a Justice of the Peace.

The two commitments from the Justice of the Peace are the Sheriff's orders to incarcerate and produce the prisoner in Court, and incidentally to incur mileage pursuant to incarceration and production in Court.

Where the Sheriff brings a committed prisoner from jail in Liberty to the Justice Court in Excelsior Springs and back to jail in Liberty to serve a sentence under a new commitment, the distance between jail and the Court is over five miles, and the Sheriff is entitled to ten cents for each mile actually traveled both ways.

Hon. James S. Rooney

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If, in Clay County, said County be authorized to hold Court in two places a different fee statute would apply to your facts.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

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

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