

SHERIFF FEES: Not entitled to \$1.25 per day for prisoners committed to jail upon default of bond to await preliminary.

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January 20, 1936.

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Honorable Forrest Smith,
State Auditor,
Jefferson City, Mo.

Dear Sir:

This department is in receipt of your letter of January 15, which is as follows:

"This office has received a fee bill from Caldwell County wherein the sheriff has charged two days' custody of prisoner while undergoing examination preparatory to commitment when number of days shall exceed one, per day \$1.25, making a total of \$15.00, as there were two defendants charged and each defendant was held in jail six days. The facts surrounding this item are as follows:

"On December 3, 1935, a warrant was issued for these two defendants and on that day they were arrested by the Sheriff of Caldwell County and taken before the justice of the peace for arraignment. They entered a plea of not guilty and in default of bond were committed to jail to await preliminary hearing, which preliminary hearing was set for December 9, 1935.

"Therefore, we request an opinion as to whether or not the sheriff is entitled to the sum of \$1.25 per day as provided by Section 11791, R.S. Mo. 1929, in view of the fact that defendants were held on a commitment issued by the justice of the peace in default of bond."

Section 11791, R.S. Mo. 1929, provides in part as follows:

" * * * 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, or who shall have in custody or under his charge any person undergoing an examination preparatory to his commitment more than one day for transporting, safe-keeping and maintaining any such person, shall be allowed by the court having cognizance of the offense, 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, * * * "

From the facts as stated in your letter, the defendants were apprehended on December 3, 1935 and immediately taken before a Justice of the Peace; they were unable to give bond and were taken by the sheriff to jail to await preliminary hearings, which were set for December 9, 1935. Thus elapsed a period of six days and you desire to know whether or not the sheriff can charge a fee of \$1.25 per day for each day that he may have had said defendants under his charge, when the number of days shall exceed 1.

We think the question is definitely decided in the case of State ex rel. v. Wofford, 116 Mo. 220, wherein the Court said (l.c. 224-226):

"When the case was first called for trial before the justice, and was continued, the justice made an entry on his docket committing the prisoner to jail to await trial. After this order was made and the cause continued, the prisoner was not undergoing an examination within the meaning of that

provision of the statute which allows to sheriffs, marshals and other officers \$1.25 per day, for every day he may have a prisoner under his charge undergoing an examination. If the order of commitment was complied with the prisoner was then within the prison walls, and the statute has no application to such case. The case of Thomas v. County of St. Louis, 61 Mo. 547, only involved the question of the right of a sheriff to the fee of one dollar for placing a prisoner in jail whom he had arrested on a *capias*, and this court held that he was not entitled to it as the mere fact of placing the prisoner in jail by him was not a commitment, and that the words 'committing any person to jail' as found in the statute relate to the execution by the sheriff of an order or warrant of commitment made or issued by some officer exercising judicial functions.

"Section 4028, Revised Statutes, 1889, is as follows: 'A magistrate may adjourn an examination of a prisoner pending before himself, from time to time as occasion requires, not exceeding ten days at one time, and to the same or any different place in the county, as he deems necessary; and for the purpose of enabling the prisoner to procure the attendance of witnesses, or for other good and sufficient cause shown by said prisoner, said magistrate shall allow such an adjournment on motion of the prisoner. In the meantime, if the party is charged with an offense not bailable, he shall be committed; otherwise, he may be recognized, in a sum and with sureties to the satisfaction of the magistrate, for his appearance for such further examination, and for want of such recognizance he shall be committed.'

"This section expressly provides that a magistrate may from time to time commit a person charged with crime before him to jail to answer for further

examination touching charges pending against him before such justice.

"Section 4030, Revised Statutes 1889, is as follows: 'When such person fails to recognize, he may be committed to prison by an order under the hand of the magistrate, stating concisely that he is committed for further examination on a future day, to be named in the order, and on the day appointed he may be brought before the magistrate, by his verbal order to the officer who made the commitment, or by his order in writing to a different person.'

"When the officer having charge of a prisoner shall take him from the county in which the offender is apprehended to that in which the crime was committed, or when the officer shall remove the prisoner from one county to another for any cause authorized by law, or when he shall have in custody or under his charge any person undergoing an examination preparatory to his commitment more than one day at a time during such examination, then he is entitled to \$1.25 per day for every day that 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."

CONCLUSION

In view of the foregoing decision, it is the opinion of this department that the sheriff is not entitled to the fee of

\$1.25 per day for the number of days as mentioned in your letter.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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

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