

FEES: The Sheriff or Constable, serving warrant of commitment is entitled to the \$1.00 fee for committing a prisoner to jail.

February 11, 1937.

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Mr. O. B. Jennings
Circuit Clerk
Howell County
West Plains, Missouri

Dear Sir:

We are in receipt of your request for an opinion dated January 26, 1937, which reads as follows:

"In regard to the fees of a Sheriff and Constable for committing a prisoner to Jail.

"We have the following Case:

"The Constable arrested a man for a misdemeanor and he fails to make bond, a commitment is issued and he is taken to the Jailer (which is the Sheriff of our county). Both parties claim that they are each allowed \$1.00 for committing this man to Jail.

"A few days later this man is tried in Justice Court and is sentenced to jail. A commitment is again issued and the Constable again delivers the prisoner to the Jailer, who again places the prisoner in Jail and each claim \$1.00 for this commitment. Making a total of \$4.00 on this one prisoner in the same case.

"How many commitments are allowed in one case, and who is allowed the fees for the commitment?"

The Legislature has provided for a warrant of commitment to issue after arrest and continuance, and before trial on all misdemeanors, under the provisions of Section 3426, R. S. Mo. 1929, which reads as follows:

"If the defendant shall fail or refuse to enter into recognizance, the justice shall commit him to the common jail of the county, or to the calaboose or other prison of the city where the trial is pending, there to remain until the day fixed for the trial of the charge alleged against him."

The Legislature has provided generally when the warrant of commitment is to issue, and its form, under Section 3443, R. S. Mo. 1929, which reads as follows:

"When judgment of imprisonment shall be given against a defendant, or he shall be committed for nonpayment of any fine or costs, the warrant of commitment may be as follows:

"The state of Missouri to the sheriff (or any constable) of _____ county, greeting:
Whereas, upon a trial had by a jury on the _____ day of _____ 19____, upon an information filed before O. K. justice of the peace of _____ county, by E. F., charging A. B. with an assault and battery (here state the offense), the defendant A. B. was by the jury found guilty, and his punishment assessed at a fine of _____ dollars and _____ days' imprisonment in the county jail, and it was thereupon adjudged by the justice that the state of Missouri should recover of and from the said A. B. the said sum of _____ dollars, the amount of the fine assessed against him, together with the costs, taxed at _____ dollars, and that he be imprisoned in the county jail of said county for _____ days and until said

said fine and costs were paid, and the said A. B. having failed to pay said fine and costs, you are hereby commanded that you take the body of the said A. B., and him forthwith commit to the custody of the jailer of the county of _____, who is hereby required the body of the said A. B. to receive and imprison in the county jail of said county for the space of _____ days, and until said fine and costs be paid, or he be otherwise discharged by due course of law. Given under my hand, this _____ day of _____, 19____."

Under Section 8527 R. S. Mo., 1929, the sheriff must receive prisoners committed to jail, and under Section 3716, R. S. Mo. 1929, the sheriff is to receive a certified copy of any judgment and sentence of prisoners committed to jail, which is his authority to execute sentence.

The fee payable to an officer for serving a warrant of commitment in a criminal cause is \$1.00, as per the provisions of section 11791, R. S. Mo. 1929.

In the case of Thomas v. County, 61, Mo. 547, l. c. 548, the Supreme Court said:

"The words 'committing any person to jail,' relate to the execution by the sheriff of an order or warrant of commitment made or issued by some officer exercising judicial functions."

Section 732, R. S. Mo. 1929, provides the method of serving commitments and reads as follows:

"Every officer to whom any writ shall be delivered to be executed shall make return thereof in writing of the time, place and manner of service of such writ, and shall sign his name to such return."

Mr. O. B. Jenning

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CONCLUSION.

From Sections 3426 and 3443, supra, we see that the warrant of commitment for a person charged or convicted of a misdemeanor is a criminal process which is directed to either a sheriff or a constable. We see that two warrants of commitment may be allowed in any one case, the first one to issue and be served on arrest after continuance, and the second to issue and be served after trial and conviction.

The service of a warrant of commitment in a criminal cause is by the same method as service of any criminal process, and the officer serving and returning same must sign his name to the writ. See Section 732, supra.

This department is of the opinion that the officer who receives the warrant of commitment from the Justice of the Peace and delivers the prisoner to the jail is entitled to make the return on the warrant of commitment and receive the \$1.00 fee provided by the Legislature "for committing any person to jail." The Justice of the Peace in allowing the fee bill should know whether the constable or sheriff performed the official service of executing the warrant. Both officers could not be entitled to this fee for serving a warrant of commitment.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

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