

CIRCUIT CLERK: Entitled to a fee of 75¢ for writ directed to sheriff for summoning petit jury for regular term of circuit court

November 9, 1937

11-10

Mr. Roy L. Kay
Prosecuting Attorney
Moniteau County
California, Missouri



Dear Sir:

This is to acknowledge receipt of your letter of November 3, in which you request the opinion of this department. The question, from your letter is as stated:

Whether or not the circuit clerk is entitled to charge for issuing twenty-four certified copies of jurors drawn for each regular term of the circuit court the sum of \$14.40, such certified copies being delivered to the sheriff for service on the jurors of the regular panel.

By a supplementary letter, we understand that the clerk is of the opinion that he is entitled to ten cents for each summons and fifty cents for certificate to copy of same.

Upon examination of the fee section for circuit clerks and of courts of common pleas, we find under Section 11785, Revised Statutes 1929, the following:

"For a venire to summon a special jury, when actually ordered and issued75".

And, also, under Section 11787, Revised Statutes 1929;

"The clerks of the several courts of this state possessing criminal jurisdiction shall be entitled to

the following fees for their services in criminal proceedings, and no fee in such proceedings shall be allowed by virtue of any other provision in this chapter contained: (*italics ours*)

* * * * *

"For a venire to summon a grand or traverse jury when one shall have been actually ordered and issued. . \$0.75."

Under Article V, Chapter 49, Revised Statutes 1929, relating to the manner of the selection of grand and petit jurors, we find Section 8758, which provides as follows:

"The names of the persons so drawn shall be recorded by the county clerk in the records of the county court, and he shall as soon thereafter as practicable deliver to the clerk of the court for which such jury is drawn a certificate thereof, who shall record the same in a book to be provided for that purpose. And the clerk of the court for which the jury is drawn shall immediately thereafter issue a summons to the sheriff of the county, directing him to summon the persons thus drawn as petit jurors to appear on such day of the term of such court as shall be named in such summons by the clerk of said court to serve as petit jurors; and it shall be the duty of the sheriff to make service of such process at least ten days before the first day of the term of court for which such persons are drawn, which summons shall be served by reading the same to the person so summoned or by leaving a copy

of the summons at his usual place of abode with some member of the family over fifteen years of age, except in such cases as may be hereafter provided."

It will be noted from this section that after the jurors have been drawn in the manner provided by statute and the list certified to by the clerk of the county court, it is delivered to the clerk of the court for which such jury is drawn and he shall immediately thereafter issue a summons to the sheriff of the county, directing him to summon the persons thus drawn as petit jurors, etc. The summons is directed by the clerk to the sheriff to summon the jurors named in such writ, and it is not the duty of the clerk of the court to direct a summons to each juror as one would infer from the supplementary letter from the circuit clerk of Moniteau County. In common practice the name of the writ for summoning a jury is commonly called a venire facias, which is a judicial writ directed to the sheriff of the county in which a cause is to be tried, commanding him that he 'cause to come' before the court on a certain day therein mentioned, the good and lawful men of the county qualified according to law to serve as jurors. Black's Law Dictionary (2nd Ed.) page 1199.

In Section 11787, supra, the term 'traverse jury' is used. A traverse jury is a petit jury or a jury impaneled to try an action or prosecution as distinguished from a grand jury.

CONCLUSION

It is, therefore, our opinion, under the Sections of the statute mentioned above, that the circuit clerk is not entitled to the \$14.40 for issuing twenty-four certified copies of jurors drawn, that is, sixty cents for each juror as suggested in your letter of request.

Mr. Roy L. Kay

-4-

November 9, 1937

However, it is our opinion that the clerk is entitled to the sum of seventy-five cents for issuing the writ directed to the sheriff to summon the jury.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

CRH LC