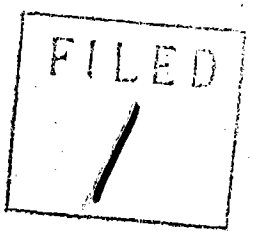
FEES: Constable is not entitled to a fee for attending court in a criminal case on a misdemeanor before a justice of the peace.

September 21, 1938



Mr. T. C. Again
Constable, Columbia Township
105 Tavern Building
Columbia, Missouri

Dear Sir:

This is to acknowledge receipt of your request for an opinion, which reads as follows:

> "In regard to fees from the Justice Courts, where pleas of guilty are entered, where I am not the arresting officer, who is entitled to fees when arrest is made by State Patrol?"

Section 3418, R. S. Mo. 1929, reads as follows:

> "Upon the filing of a complaint before a justice of the peace, verified by the oath or affirmation of a person competent to testify against the accused, if the justice be satisfied that the accused is not likely to try to escape or evade prosecution for the offense alleged, it shall be his duty to forthwith forward such complaint to the prosecuting attorney; and it shall be the duty of the complainant to forthwith inform the prosecuting attorney what facts can be proved against the accused, and by what witnesses, and the residence of such witnesses; and if, after investigation of such facts, the prosecuting attorney be satisfied that an offense has been committed, and that a case against the accused can be made,

> it shall be his duty to immediately file his information before the justice taking the complaint, and give to said justice a list of the witnesses to be subpoenaed on the part of the state; and upon the filing of the information by the prosecuting attorney, as herein provided, with the justice of the peace, or upon the filing of an information by the prosecuting attorney upon his own information and belief, without complaint of a private individual having previously been filed, it shall be the duty of the justice to forthwith issue a warrant for the arrest of the defendant, directed to the sheriff of the county or constable of the township, or, if no such officer is at hand, then to some competent person who shall be specially deputed by the justice to execute the same, by written indorsement to that effect on such warrant."

It will be noticed that according to the above section the only duty that is to be performed by the prosecuting attorney is to investigate the facts submitted by the complaint which is filed before the justice of the peace, and then in the case of a misdemeanor immediately file his information before the justice of the peace taking the complaint. It then becomes the duty of the justice of the peace to forthwith issue a warrant for the arrest of the defendant, directed to the sheriff of the county or constable of the township. This matter, according to this section, is discretionary with the justice of the peace and is not dependent upon any orders by the prosecuting attorney. The justice of the peace may direct the warrant to the sheriff of the county or to the constable of the township, and in case of a plea of guilty may direct the commitment to the sheriff of the county or the constable of the township.

As to fees of constables in criminal proceedings, Section 11777, R. S. Mo. 1929, provides the following fees:

"For summoning each jury before a justice of the peace..... $1.00
For taking a criminal to jail..... 1.00
And for every mile traveled in taking a criminal to jail and returning therefrom, provided the distance so traveled be more than five miles, the sum of, per mile..... .10
For taking every bond required by law to be taken..... .50
For subpoenaing a witness..... .50"

As you will notice in the above section, the statute does not provide a fee for the constable attending court in a criminal proceeding.

Criminal costs, as well as civil costs, are solely a creature of the statutory law. Our Supreme Court in State ex rel. v. Wilder, 197 Mo. l. c. 32, said as follows:

> "For many years this court, in obedience to strict statutory provisions, has sedulously maintained that no costs can be taxed except such as the law <u>in terms</u> allows. Shed v. Railroad, 67 Mo. 687; Crouch v. Plummer, 17 Mo. 420; State ex rel. v. Hill, 72 Mo. 512; Williams v. Chariton, 85 Mo. 646."

Likewise, in the case of Ring v. Paint & Glass Co., 46 Mo. App. l. c. 577, the court said:

> "It may be stated that the entire subject of costs, in both civil and criminal cases, is a matter of statutory enactment; that all such statutes must be strictly construed, and that the officer or other person claiming costs, which are contested, <u>must be able to put his finger on the statute authorizing their taxation.</u>"

Under the above sections, and especially Section 3418, supra, the constable and the sheriff have the same duties and jurisdiction.

Under Section 11518, R. S. Mo. 1929, the duties of the sheriff are described as follows:

> "Every sheriff shall quell and suppress assaults and batteries, riots, routs, affrays and insurrections; shall apprehend and commit to jail all felons and traitors, and execute all process directed to him by legal authority, including writs of replevin, attachments and final process issued by justices of the peace; * * *."

CONCLUSION

In view of the above authorities, it is the opinion of this department that a member of the State Patrol, who is not a constable or deputy constable or a sheriff or deputy sheriff, is not entitled to any fees where a defendant pleads guilty before a justice of the peace on a misdemeanor charge, but that the constable or deputy constable or sheriff or deputy sheriff, when serving a warrant or commitment issued by the justice of the peace, is entitled to the fees notwithstanding the fact that the constable of the township is present in the courtroom. It is further the opinion of this department that a constable is not entitled to a fee for attending court in a criminal case before a justice of the peace.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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