

SHERIFF:

Sheriff not entitled to fees for mileage in making investigations.

February 5, 1938.

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Honorable Ben W. Ausman,  
Clerk of County Court,  
Maysville, Missouri.

Dear Sir:

This will acknowledge receipt of your request of January 31, 1938, which reads as follows:

"By request of the County Court I am writing you in regard to the fees paid by the County Court to the sheriff.

"The Court has been under the impression that no fees are to be allowed to the sheriff only where an arrest occurs. They have been under criticism by certain individuals for not paying the sheriff mileage on investigations.

"Will you please advise us as to their exact position regarding these fees?"

We understand your question to be, "Can the County Court allow the sheriff of your county fees for mileage in making criminal investigations?"

Article 9, Section 12, Constitution of Missouri, reads as follows:

"The General Assembly shall, by a law uniform in its operation, provide for and regulate the fees of all county officers, and for this purpose may classify the counties by population."

The fees provided for the sheriff in criminal cases are set forth in Sections 11791 and 11792, R. S. Mo. 1929. Section 11792 refers to fees for mileage, and reads as follows:

"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."

Section 11793, R. S. Mo. 1929, provides as follows:

"No sheriff or ministerial officer in any criminal proceeding shall be allowed any fee or fees for any other services than those in the two preceding sections enumerated, or for guards not actually employed."

It will be seen from the last quoted section (11793), that the sheriff cannot be allowed fees in criminal cases unless those fees are enumerated in Sections 11791 and 11792, *supra*. Mileage for investigations is not enumerated therein, and hence same cannot be allowed.

Furthermore, the Supreme Court has definitely laid down the following rule on the question of allowance of fees to public officers:

"It is well-settled law in this State that the right to compensation for the discharge of official duties is purely a creature of the statute, and that the statute which is claimed to confer that right must be strictly construed. The right of a public officer to compensation is derived from the statute, and he is

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entitled to none for services he may perform as such officer, unless the statute gives it. State ex rel. v. Adams, 172 Mo. 1-7; Jackson County v. Stone, 168 Mo. 577; State ex rel. v. Walbridge, 153 Mo. 194; State ex rel. v. Brown, 146 Mo. 401; State ex rel. v. Wofford, 116 Mo. 220; Givens v. Daviess Co., 107 Mo. 603; Williams v. Chariton Co., 85 Mo. 645; Gammon v. Lafayette Co., 76 Mo. 675." (Sanderson v. Pike County, 195 Mo. 1. c. 605.)

It is true that the sheriff often goes to much expense and trouble in making investigations, but if the Legislature has not provided compensation for such expense and services, then none can be allowed. As was said in State ex rel. v. Hackmann, 305 Mo. 1. c. 351:

"The argument of hardship and that an officer should not be compelled to incur a financial loss, in performing the duties incident to his office, cannot be considered by the courts in passing upon the rights of relator, as fixed by the statute. Failure to provide a salary or fee for a duty imposed upon an officer by law does not excuse his performance of such duty."

CONCLUSION.

It is, therefore, the opinion of this office that the County Court of your county cannot allow the sheriff mileage fees for making investigations as to violations of the law or in making any other investigations incident to a criminal case, his fees being limited in such cases to those enumerated in Sections 11791 and 11792, R. S. Mo. 1929.

Yours very truly,

HARRY H. KAY,  
Assistant Attorney General.

APPROVED:

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J. E. TAYLOR,  
(Acting) Attorney General.

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