

SALARIES AND FEES:
CONSTABLES:
INQUESTS:

Constables may charge a fee of one
dollar for summoning a jury for a
coroner's inquest.

June 23, 1938

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Mr. Alvin H. Juergensmeyer,
Prosecuting Attorney,
Warren County,
Warrenton, Missouri.

Dear Sir:

This is in reply to yours of June 20 requesting
an official opinion from this department based upon the
following letter:

"The law provides that a coroner shall
have the constable or sheriff to summon
a jury in case of an inquest. The
regular fee for the sheriff for summon-
ing jury in a case and calling same for
trial as per Section 11789 R.S. M. 1929
is \$1.00. The Statute does not provide
how the constable shall be paid for
summoning the jury.

It is a service rendered and I should
like to know whether your Department
has made any ruling as to whether a
constable or sheriff is entitled to pay
for summoning a jury for a coroner's
inquest."

By your letter you state that you do not find that
the statutes directly provide how the constable shall be
paid for the summoning of the jury for a coroner's in-
quest. In our research on this question we find that
Section 11612, R.S. Mo. 1929 provides as follows:

"Every coroner, so soon as he shall be notified of the dead body of any person, supposed to have come to his death by violence or casualty, being found within his county, shall make out his warrant, directed to the constable of the township where the dead body is found, requiring him forthwith to summon a jury of six good and lawful men, householders of the same township, to appear before such coroner, at the time and place in his warrant expressed, and to inquire, upon a view of the body of the person there lying dead, how and by whom he came to his death."

Section 11613, R.S. Mo. 1929 provides as follows:

"Every such constable to whom such warrant shall be directed shall forthwith execute the same, and shall repair to the place where the dead body is, at the time mentioned, and make return of the warrant, with his proceedings thereon, to the coroner who granted the same."

Section 11624, R.S. Mo. 1929 provides as follows:

"If the coroner is unable to take the inquest, any justice of the peace, or any judge or justice of some court of record of the proper county, may take the inquest and perform all the duties hereby enjoined on the coroner."

From your letter it appears that you are under the

impression that the statute which refers to fees of the sheriff would apply, however, in the case of Hagner v. Publishing Company, 172 Mo. App. 442, the court held that it was not the duty of the sheriff to attend the coroner's inquest and for that reason I do not think the sheriff's statute on salaries and fees would be applicable to your question. Section 11625, R.S. Mo. 1929 provides as follows:

"If the constable of the proper township is unable to execute the duties required by this chapter, the officer taking the inquest may direct his warrant to any householder of the county, who shall perform the duties of constable, be subject to the same penalties, and entitled to the same fees."

By this section if the constable is unable to serve the warrant for the jury the coroner may direct it to any householder in the county. This section provides that such householder may receive the same fees for this service as the constable.

By Section 11632, R.S. Mo. 1929 it provides in part as follows:

"The coroner or other officer holding an inquest, as provided for by this chapter, shall present to the county court a certified statement of all the costs and expenses of said inquest, including his own fees, the fees of jurors, witnesses, constables and others entitled to fees for which the county is liable;" * * * * *

Section 11777, R.S. Mo. 1929 which provides for the

fees of the constable is in part as follows:

"Constables shall be allowed fees for their services as follows:

For summoning each jury before a justice of the peace \$1.00."

We recognize the rule laid down by the court in the case of State ex rel. v. Brown, 146 Mo. 401, wherein it is held that an officer is not entitled to a fee or compensation unless allowed by statute.

Said Section 11777, allowed the constable a fee for calling a jury before a justice of the peace but makes no provisions for such fee in case the jury is called before the coroner.

Section 11624, supra, provides that a justice under certain circumstances may hold an inquest. In such a case there is no doubt that the constable would be entitled to the fees for summoning such a jury before a justice of the peace who is holding the inquest. It would seem to be unfair to the officer to prohibit him from collecting a fee for summoning a jury for an inquest before a coroner or any other officer except the justice of the peace whereby the statute referred to above he would be entitled to the fee if the justice of the peace holds the inquest. There is no doubt that the lawmakers have intended that the officers be paid for this service for in said Section 11625 they reasserted themselves as to this fee when they stated that the householder who serves the process for the constable shall be allowed the same fees as the constable.

Said Section 11632 contemplates that the constable shall receive fees for serving the warrant for the jury, for it directs the coroner to include the fees of the constable in his fee bill to the county court.

Mr. A. H. Juergensmeyer

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CONCLUSION

While there is not a direct provision for paying a constable for summoning a jury for an inquest held by any officer except a justice of the peace, yet by reading all of the foregoing statutes together, we are of the opinion that the lawmakers intend that the person who summons a jury for an inquest whether held by a justice of the peace, coroner, or any other officer authorized to hold such inquest shall be entitled to a fee of one dollar for such service and for mileage as is provided by the statute.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

TWB DA