

STATE HIGHWAY PATROL:

Witnesses' fees earned by members may be retained except in state criminal cases. Where retained expenses are not reimbursed by State.

June 27, 1938

Captain Thomas L. Leigh
Commanding Troop "C"
State Highway Patrol
329 S. Kirkwood Road
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Dear Sir:

We wish to acknowledge your request for an opinion under date of June 22, 1938, as follows:

"I have a question in regard to the disposition of witness fees payable to members of the Patrol for services in civil cases, the determination of which will be of importance to the members of this Troop and to the State Patrol in general.

I have taken this matter up with Col. B. M. Casteel and the gist of his reply is that we must determine the legal questions involved before disposing of these fees.

Section 11, Page 234, Laws of 1931 states in part, "All fees for the arrest and transportation of persons arrested and witness fees for members of the Patrol shall be the same as provided by law for sheriffs and shall be taxed and collected as costs and paid into the State Treasury as provided by law."

This Section, of course, applies to criminal costs, and the universal practice is, and has always been, that witness fees and mileage taxed in criminal cases are paid into the State Treasury.

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There is another class of criminal cases in which we are some times summoned as witnesses. These are criminal cases in Federal Court. In this type of cases the fees and costs are figured according to the Federal Law and are paid by the U.S. Marshall out of Federal funds. No state money is involved. What should be done with the fees earned in these cases?

We are also called upon with increasing frequency to appear as witnesses in civil cases in State Courts. These are usually cases growing out of automobile accidents which we have worked in line of duty. To be more specific, I have here now, on my desk, two checks signed by the Circuit Clerk of Washington County. These checks are for attendance and mileage in a civil case in Potosi and are payable to members of this Troop. These members were summoned in the usual way and testified as witnesses. When the case was finally disposed of the costs were paid and the clerk of the court mailed checks to the individual troopers. My questions are, does Section 11 apply in this case or are these checks legally the property of the persons to whom they are made payable?

I have had some correspondence with Colonel Casteel on this question and I know that he is anxious to have the best legal opinion possible upon it. Since the question originated in this Troop I think it is his wish that I incorporate the facts in a request for an opinion.

I will appreciate the opinion of your office on this question."

Section 11 of the Laws of Missouri 1931, page 234, provides as follows:

"The necessary expenses of the members of the patrol in the performance of their duties shall be paid by the state when such members are away from their places of residence or from the district to which they are assigned, subject to the approval of the commission. All fees for the arrest and transportation of persons arrested and witnesses' fees for members of the patrol shall be the same as provided by law for sheriffs and shall be taxed and collected as costs and paid into the state treasury as provided by law."

The primary rule of statutory construction is to ascertain and give effect to the lawmakers' intent. *Meyering vs. Miller*, 51 S.W. (2) 65, 330 Mo. 885.

An examination of the above statute reveals that it was the intention of the legislature that "the necessary expenses of the members of the patrol in the performance of their duties" should be "paid by the State" when they are "away from their places of residence or from the district to which they are assigned", and the State would look to reimbursement of expenses from "all fees for the arrest and transportation of persons arrested and witnesses' fees".

Did the Legislature intend to include all "witnesses' fees" earned by members of the patrol? We believe that the rule of *eiusdem generis* is applicable. Said rule of statutory construction is defined by the Court in the case of *Puritan Pharmaceutical Company vs. Pennsylvania R. Company*, 75 S. W. (2) (Mo. App.) 508:

"Rule of construction known as 'ejusdem generis' rule means that, where general words in statute follow specific words, designating special things, general words will be considered as applicable only to things of same general character as those which are specified. *Mangelsdorf vs. Pennsylvania Fire Insurance Company*, 224 Mo. App. 265, 26 S.W. (2) 818."

The specific word in the statute is "fees", and is followed by the general words "for the arrest and transportation of persons arrested and witnesses" indicating that the witnesses' fees that the Legislature had in mind were those fees growing out of criminal cases.

The Legislature having made it the duty of the State Highway Patrol to make arrests in cases of violation of law and knowing that by reason of same the members of the patrol would be called as witnesses in criminal cases, provided that their fees be taxed and collected as costs and paid into the State Treasury. They provided that in turn the State would pay their necessary expenses, subject to the approval of the Commission, when called away from their residence or from the district to which they are assigned.

From the foregoing we are of the opinion that the fees earned by attendance of the members of the State Highway Patrol as witnesses in criminal cases in State courts should be taxed and collected as costs and paid into the State Treasury.

We are further of the opinion that the fees earned by attendance of members of the State Highway Patrol as witnesses in civil cases may be retained by said members but in said cases the members of course would not be entitled to be reimbursed by the State for any expenses incurred.

The next question to be determined is whether Section 11 supra, also includes witness fees earned by members in criminal cases in the Federal Courts. Said Section 11 in referring to the

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various fees states that they "shall be the same as provided by law for sheriffs". The witness fees in federal cases being on an entirely different scale it is evident that the Legislature was referring only to those fees earned by members in State courts.

We are therefore of the opinion that the fees earned by the attendance of members of the State Highway Patrol as witnesses in criminal cases in Federal Courts may be retained by said members, but in said cases the members would not be entitled to be reimbursed by the State for any expenses incurred.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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