

JURIES:
PETIT AND ALTERNATE:
SHERIFF'S FEE FOR SUMMONING:

Regular panel of petit jurors summoned at each regular term of the circuit court for which sheriff receives \$8.40 and mileage; alternate jurors only summoned when regular juror does not appear and when ordered by court.

April 12, 1938

4-15

Mr. E. L. Redman,
Prosecuting Attorney,
Gentry County,
Albany, Missouri.



Dear Sir:

This is to acknowledge yours of April 8, 1938, requesting an official opinion from this department, which is as follows:

"The County Court of this county has asked my opinion concerning a portion of the bill of the sheriff of our county for mileage and fees in summoning the regular list of alternate jurors, drawn by the County Court under the provisions of Sec. 8755, R.S. 1929.

In the regular way, prior to the January term of the Circuit Court, the County Court drew a list of petit jurors and alternate jurors and certified the lists to the Clerk of the Circuit Court. The Clerk of the Circuit Court, following a long practice here in this county, immediately thereafter prepared a summons for a jury to serve as petit jurors and affixed thereon the names of the regular petit jurors drawn by the County Court, which summons directed the sheriff to summons the therein named persons to appear before the judge of the Circuit Court of Gentry County on the 2nd day of the March term of Court, and also prepared and delivered to the sheriff at the same time a similar summons for

a jury, designating the list as alternate jurors, and commanded him in the same manner to summons them to appear to serve as alternate jurors for the Court on the same day. The sheriff served both of these summons and following a continuance of Court, because of illness of the judge, both sets of jurors appeared, the petit jurors and the alternate jurors. I would be pleased to have the opinion of your department as to whether or not the sheriff is entitled to his mileage and services for summoning the alternate jurors under the above circumstances.

I would like your opinion further concerning the construction of Sec. 8758 with regard to the term petit jurors, and as to whether or not that section contemplates that the clerk issue summons to the sheriff, or both the regular and alternate jurors, or for the regular petit jury only.

It would appear from the reading of Sec. 8756 and 8758 together that the alternate jurors should not be summoned by the clerk without order of Court after determining what regular jurors were disqualified or failed to appear."

Section 8755, R.S. No. 1929, provides in part as follows:

"The clerk of the county court so situated as to be unable to see the names on such slips shall, publicly, in the presence of said court and in open court, proceed to draw out names separately and singly from one township until he gets the number of names required from such township for petit jurors and an equal number as alternate jurors to serve on petit juries if summoned; and in the same manner shall continue to draw names from each of the remaining townships, separately and singly,

until he shall have drawn the names of twenty-four persons who shall serve as petit jurors at the next ensuing term of said court for which said petit jurors are drawn, and the names of twenty-four persons to be designated as alternate petit jurors, the names of said alternate petit jurors to be recorded and numbered consecutively from one to twenty-four, inclusive, in the order in which they are drawn:" * * * * *

From this section the law contemplates that only twenty-four men be drawn for the regular panel for each term of the circuit court. It also provides for the drawing of twenty-four alternate jurors for each such term. Webster's Dictionary defines the word "alternate" as:

"A substitute; one designated to take the place of another, if necessary in performing some duty."

With this definition of the word "alternate" in mind, the lawmakers enacted Section 8755, supra, providing for alternate jurors to take the place of regular jurors from the same township in case the regular juror for some cause does not serve. Section 8756, R.S. Mo. 1929 provides as follows:

"Except in cities having over three hundred thousand inhabitants, and in counties containing cities of fifty thousand inhabitants and less than three hundred thousand, whenever any person or persons drawn by the county court as a regular juror as provided in this article shall be disqualified or shall be excused by the court or for any reason shall fail to attend as such juror, the court shall order the sheriff to summon from the list of alternate petit jurors drawn by the county court a sufficient number of persons to serve as jurors for such term or part of term of said court

as follows: An alternate or alternates shall be summoned first from the township or townships in which the juror or jurors excused or failing to attend reside; and if for any reason an alternate from such township or townships cannot attend or be excused or the list of alternates from such township or townships shall have been exhausted then alternate petit jurors shall be summoned in the order in which their names shall have been drawn by the county court: Provided, that if it shall be necessary to fill vacancies in the jury panel for the trial of any one case the court may in its discretion order the sheriff to summon from the bystanders a sufficient number of qualified persons to fill such vacancies in such case."

This section clearly evidences the fact that the alternate juror is only to be summoned when and if the regular juror is disqualified or is excused by the court and then he is only summoned when so ordered by the court. Section 8758, R.S. Mo. 1929 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."

This section provides that when the list of petit jurors are drawn, they are to be certified by the county clerk to the circuit clerk who is then to issue a summons to the sheriff directing him to summons the petit jury only. The petit jury is a body of twenty-four men spoken of in Section 8755, supra. No provision is made in said Section 8758, supra, for summoning of the alternate petit jurors. The only provision we find for the calling of the alternate petit juror is found in said Section 8756, supra. Section 11789, R.S. Mo. 1929, provides as follows:

"Fees of sheriffs shall be allowed for their services as follows:

For summoning a standing jury... \$8.40."

By the term "standing jury", we think the law means the jury which is drawn by the county court and summoned by the circuit clerk on the certification of such list by the county clerk. This is the jury which, in ordinary terms, is standing by when the term of court opens and regardless of the number summoned, the statute provides for a fee of only eight dollars and forty cents (\$8.40). So if the clerk should, through a mistake, summons both the regular panel and the alternate panel, and the sheriff were to serve the summons on both panels, he has only summoned a standing jury for that term of the court and his fee for this service is prescribed by said Section 11789, supra, at eight dollars and forty cents (\$8.40), and for mileage as prescribed in said section.

As stated in the case of State ex rel. Troll v. Brown, 146 Mo. 401, 406:

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"It is well settled that no officer is entitled to fees of any kind unless provided by statute, and being solely a statutory right statutes allowing the same must be strictly construed."

This ruling is and has been for a long period of time applied by the courts of this state.

By construing Sections 8755, 8756 and 8758 together it is apparent that it was intended that the regular panel of twenty-four jurors be summoned by the circuit clerk by authority of the certificate he receives from the county clerk as provided by said Section 8758, and that the alternate jurors be summoned only when ordered by the court as provided by said Section 8756, supra.

As there is no statutory authority for the circuit clerk to issue the summons for the alternate juror without an order of the circuit court, such act by the circuit clerk without such order, would be null and void, and as the sheriff is charged with the knowledge of the law on this question, any act he would perform under such a void summons would be null and void. As the statute provides only for the payment for services directed by the law, the sheriff would not be entitled to a fee for service or for mileage for summoning alternate petit jurors unless they are ordered by the circuit court.

CONCLUSION

It is, therefore, the opinion of this department that the sheriff is not entitled to mileage or to a fee for summoning an alternate petit juror unless he is so ordered by the circuit court.

Respectfully submitted,

TYRE W. BURTON,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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