

OFFICERS - SALARIES AND FEES - LIMITATIONS:

1. Constable is entitled to 10¢ per mile for serving jury summons for inquest.
2. Officer may make claim for any salary or fee provided the same is unpaid and the statute of limitations has not run.

August 8, 1938

Mr. Joseph B. Wentker
Prosecuting Attorney
St. Charles, Missouri



Dear Sir:

This is in reply to yours of July 27th wherein you request an opinion upon the following set of facts:

"A State audit of the books of St. Charles is now in progress. The local auditor has pointed out a previous opinion rendered by the Attorney-General's office that the Constables are not entitled to a \$1.00 fee for serving a warrant or summons of jury-men to serve at inquests conducted by the Coroner, inasmuch as no provision is made in the Statutes providing for such a fee.

"In order to further clarify as to what the Constable may be entitled to, and in order to get a definite ruling thereon, so as to clear the situation in this and other counties, may I submit the following propositions:

"1. Sec. 11777, Rev. Sta. Mo. 1929 Fees of Constables, provides 'For each mile actually traveled in serving any process'\$0.10. Now then the warrant or summons would seem to be a process, and would the Constable therefore be entitled to such 10¢ per mile in calling upon and selecting the jurors for inquests.

"2. If such 10¢ per mile fee is applicable to the serving of such warrant or summons

of inquest jurors, can the Constable make a claim therefor on inquests which have been closed, and to offset such claim against the \$1.00 fee (for summoning) improperly paid.

"If such 10¢ mileage fee is applicable and cannot be offset as to past inquests, then we take it of course that such fee can be charged in the summoning of future inquest jurors."

I notice from the first paragraph of your letter that you are under the impression that the Constable is not entitled to a \$1.00 fee for serving a warrant or summons of jurymen to serve at inquests conducted by the Coroner. On this particular question, this office on June 23, 1938, in an opinion rendered to Mr. Alvin H. Juergensmeyer, Prosecuting Attorney of Warren County, held that the Constable may charge a fee of \$1.00 for summoning a jury for a Coroner's inquest. I am enclosing a copy of this opinion for your information. This office has also furnished a copy of this opinion to the Auditor's Office, which will likely take care of that question in the audit of your Constable.

I.

Your next question goes to the authority of the Constable to charge mileage for serving the warrant or summons on the jurors for the Coroner's inquest.

Section 11777, R. S. Mo. 1929, provides the following fee for Constables:

"For each mile actually traveled in serving process.....\$0.10."

The word "process" is defined in Words and Phrases, (4th Ed.) Vol. 3, page 194, as:

"A writ, warrant, subpoena, or other formal writing issued by authority of law."

Section 11612, R. S. Mo. 1929, speaks of this process as a warrant directed to the Constable to summon a jury, which jury shall appear before the Coroner for the purpose of holding the inquest.

Section 11613, R. S. Mo. 1929, provides that the Constable shall forthwith execute the warrant and make return thereon.

CONCLUSION

From the foregoing, it is the opinion of this department that the warrant or summons which is delivered to the Constable by the Coroner for the purpose of summoning a jury comes within the class of process which is contemplated by the lawmakers that the Constable shall be entitled to charge mileage for service thereon by virtue of the provisions of said Section 11777.

II.

The second question submitted in your request goes to the question of whether or not a Constable can make a claim for mileage for serving a warrant or summons for the Coroner's jury, after he has already turned in his bill for the payment of his fees in such inquest and after the inquest has been closed.

On the last clause of this request, that is, whether or not if the Constable is entitled to the mileage fee, could he offset it against the claim improperly paid, as this office has held that such claim is not improperly paid, we deem it not necessary to rule on that part of your request.

On the question of whether or not an officer may make a claim for fees in a case which has been closed, we find that he may make such claim if the statute of limitations has not run.

Vol. 46, C. J., Sec. 275, page 1027, makes the following statement on this question:

"The acceptance of less compensation than that established by law for the office does not estop an officer from subsequently claiming the legal compensation."

Section 862, R. S. No. 1929, provides that the five-year statute of limitation runs on:

"Second, an action upon a liability created by a statute other than a penalty or forfeiture."

In the case of State ex rel. Wingfield v. Kansas City, 236 S. W. (Mo.) 516, an employee who was wrongfully discharged as a civil service employee sued for his salary. The court, in holding that his recovery for compensation due him was subject to the five-year statute of limitation, said:

"Moreover, we hold that section 1317, R. S. 1919, does apply; this being 'an action upon a liability created by a statute other than a penalty or forfeiture,' and that this case is governed by the five-year period of limitations."

CONCLUSION

From the foregoing, it is the opinion of this department that the Constable or any other officer may make a claim for any compensation which is due him under the statute provided such claim has not been paid and provided the five-year statute of limitation has not run.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
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