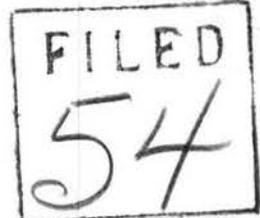


SHERIFF'S FEES: Entitled only to mileage actually traveled.
HIGHWAY PATROL: Warrant to be executed by them, should be Addressed to them.

June 5th, 1939.

Hon. Edward V. Long,
Prosecuting Attorney,
Pike County,
Bowling Green, Missouri.



Dear Sir:

We are in receipt of your letter of June 1st, requesting three rulings, and will take them up in the order given by you.

Your first question:

"A member of the State Highway Patrol executes a State Warrant and delivers the prisoner to the Sheriff. The Sheriff has no active part in making the arrest or transferring the prisoner to jail. However, the Sheriff makes a return on the warrant showing that he travelled a certain number of miles in executing the warrant and in bringing the prisoner to jail. Is the Sheriff entitled to receive this mileage?"

Section 11789, R. S. Mo. 1929, provides:

"No mileage fees for serving any writ, summons or other legal process shall be collected unless the sheriff shall actually travel the distance for which he makes such charge: * * * * *"

June 5th, 1939.

Section 11792, R. S. Mo., 1929, further provides that:

"* * * * *. Ten cents for each mile actually traveled in serving any venire summons, writ, subpoena or other order of court * * * * *."

In connection with these statutes, we wish to call your attention to the fact that only the officer to whom the writ or warrant is directed shall execute same.

CONCLUSION

The Sheriff is entitled to fees for only the mileage actually traveled by him in executing any warrant. Under the circumstances referred to by you, he would probably be entitled to fees of one dollar (\$1.00) for executing the warrant by bringing the prisoner before the magistrate.

Your second question is as follows:

"A warrant is issued by a Justice of the Peace in the county and the same is executed by a member of the State Highway Patrol. The Trooper delivers the prisoner to the Sheriff at the jail but the Sheriff refuses to take charge of the prisoner or lock him in the jail but releases the prisoner. What would be the proper procedure against the Sheriff in such case?"

Section 8527, R. S. Mo., 1929, reads as follows:

"It shall be the duty of the sheriff and jailer to receive, from constables and other officers, all persons who shall be apprehended by such constable or other officers, for offenses against this state, or who shall be committed to such jail by any competent authority; and if any sheriff or jailer shall refuse to receive any such person or persons, he shall be adjudged guilty of a misdemeanor, and on conviction shall be fined in the discretion of the court."

Section 8526, R. S. Mo., 1929, makes the Sheriff of each county in the state the jailer, and provides that he may appoint a jailer under him who should bear in mind that a warrant provides for bringing of a prisoner apprehended before the magistrate. Upon his apprehension, he may give bail, or in the case of failure to give bail, he shall be committed to jail.

CONCLUSION

Any sheriff who refuses to accept a prisoner upon the proper commitment is guilty of a misdemeanor, and may be convicted of such.

Your third question:

"A State Warrant is executed by a member of the State Highway Patrol and the Sheriff refuses to make a return on said warrant. Is the Trooper authorized to sign such warrant as having been executed?"

Section 3418, R. S. Mo., 1929, provides:

"* * * * * it shall be the duty of the justice to forthwith issue a warrant for the arrest of the defendant, directed to the sheriff of the county or constable of the township, or, if no such officer is at hand, then to some competent person who shall be specially deputed by the justice to execute the same, by written indorsement to that effect on such warrant."

CONCLUSION

A state warrant is ordinarily directed to the Sheriff or any constable of the county and should be given to either of them which may be present. If neither of them is present the warrant may be directed by the Justice or officer issuing same to a member of the state highway patrol who may return same.

Respectfully submitted,

ROBERT L. HYDER,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

RLH/RV