

SHERIFFS

~~SHARES~~ Entitled to mileage in each case when serving five warrants on the same defendant.

July 13, 1939. 7/24



Honorable G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri

Dear Mr. Marr:

We acknowledge your request for an opinion, which reads as follows:

"Five charges of grand larceny were filed against the same defendant. All five warrants were served on the defendant. The sheriff made only one trip in serving the five warrants. He has put on his warrants the same mileage for each warrant. He contends that he served all five warrants at the same time and that he is entitled to mileage on each warrant as they arose on different cases.

"The difficulty with this arose when the defendant was given one preliminary examination and the one preliminary examination was allowed to do for all five charges. The grand larceny was for a truck load of cattle stolen at different times from different owners, but all cattle shipped out of the assembled place at the same time in one truck. The justice of the peace allowed mileage only on one warrant. The sheriff seeks to have the justice certify up in the transcript of the cases his mileage on all the warrants.

"Is the sheriff entitled to mileage on all five warrants in arresting the defendant and lodging him in jail?"

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As to the taxation of costs in criminal cases, the Missouri rule is laid down in Ring vs. Vogel, 46 Mo. App. 374 1. c. 377 as follows:

"Preliminary to the discussion of the items of cost here in controversy, it may be stated that the entire subject of costs, in both civil and criminal cases, is a matter of statutory enactment; that all such statutes must be strictly construed, and that the officer or other persons claiming costs, which are contested, must be able to put his finger on the statute authorizing their taxation."

The rule could well be stated that where an officer puts his finger on the statute which allows him costs, then he should be allowed such costs.

We look to the statutes where a sheriff claiming costs for serving a state warrant for grand larceny might come within the provisions of the statutes relating to costs in performing such an official duty. Under the statutes grand larceny is an offense, the sole punishment of the same being imprisonment in the state penitentiary. Section 3828 R. S. Mo. 1929 provides:

"In all capital cases, and those in which imprisonment in the penitentiary is the sole punishment for the offense, if the defendant is acquitted, the costs shall be paid by the state; and in all other trials on indictments or information, if the defendant is acquitted, the costs shall be paid by the county in which the indictment was found or information filed, except when the prosecutor shall be adjudged to pay them or it shall be otherwise provided by law."

Section 3851 R. S. Mo. 1929 provides:

"Whenever the state or county shall be liable under the provisions of this article, or any other law, for costs incurred in any examination of any felony, or in the trial of any misdemeanor before any justice of the peace, it shall be the duty of such justice to make out, certify and return to the clerk of the circuit or criminal court of the county a complete fee bill, specifying each item of service and the fee therefor, together with all the papers and docket entries in the case; and it shall thereupon be the duty of such clerk to make out a proper fee bill of such costs, which shall be properly and legally chargeable against the state or county, which shall be examined by the prosecuting attorney, and proceeded with in all respects as a fee bill made out for costs incurred in such court of record."

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: * * * "

Section 11792 R. S. Mo. 1929 provides:

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

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CONCLUSION

Under Section 3851, supra, where the state or county are liable to the sheriff for costs in serving a warrant, the Justices duty is to make out, certify and return to the clerk of the circuit court a "complete fee bill", specifying each item of service and the fee therefore. Mileage is an item of service which a sheriff can lawfully claim in any criminal case.

The legislature, by the use of the word "any" in Section 3851, supra, intended that a Justice be empowered to itemize a fee bill yet not omit statutory mileage charges of the sheriff for each mile actually traveled in serving a warrant in any particular case. The statute is general and makes no exception where there be several felonies charges against the same defendant, hence the Justice has no right except to do his statutory duty in making up a complete fee bill for the circuit clerk in any case. The state warrant in each case is for a particular crime and the sheriff's right to statutory mileage costs follows any and all separate charges, so long as the Justice is convinced that the distance was actually traveled by the sheriff in serving the process.

The fact that the statutes permit the sheriff to serve any number of state warrants on the same trip is no reason to preclude his statutory mileage in any case.

From the facts stated in your letter we are of the opinion that the sheriff is entitled to a fee bill in all five cases.

Respectfully submitted,

WILLIAM ORR SAWYERS
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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