

CRIMINAL COSTS

State Highway Patrolmen are entitled to witness fees when the trial is held more than five miles from their place of residence and are entitled to the same fees for the transportation of prisoner as allowed the sheriff or any other officer.

February 10, 1939

Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Sir:

We are in receipt of your request for an opinion, under date of February 8th, 1939, which reads as follows:

"We are in receipt of a Cost bill from Clinton County in the case, State vs. Pope, in which a number of Highway Patrolmen were used as witnesses and charged mileage and their witness fees from Jefferson City. This fellow, Pope was charged with robbing a bank which had nothing at all to do with enforcing the highways.

"I am enclosing a letter from the Deputy Circuit Clerk of Clinton County showing the comment of Judge Bridgman, Circuit Judge questioning the right of Highway Patrolmen to charge mileage and witness fees in testifying as state witnesses.

"I would like an opinion from your department as to whether Highway Patrolmen can legally charge witness fees and mileage in criminal cases."

Section 13, Session Laws of Missouri, 1931, page 235, states as follows:



* * "The members of the patrol shall have the powers now or hereafter vested by law in peace officers except the serving or execution of civil process.
 * * * * *

Section 11, Session Laws of Missouri, 1931, page 234, states as follows:

* * "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 fees allowed the sheriff are set out in sections 11791-2, R.S. Missouri, 1929, and are too lengthy to set out in this opinion.

State Highway Patrolmen, when acting as witnesses, only are allowed the same fee as a witness.

Section 11798, R. S. Missouri, 1929, reads as follows:

"Witnesses shall be allowed fees for their services as follows: For attending any court of record, reference, arbitrators, commissioner, clerk or coroner, at any inquest or inquiry of damages, within the county where the witness resides, each day, \$1.50. For like attendance out of the county where witness resides, each day, \$2.00. For traveling each mile in going to and returning from the place of trial, .05."

Section 3837 R. S. Missouri, 1929, which prohibits an officer, appointee or employee holding a state, county, township or municipal office, including police officers and policemen, from claim-

fees in criminal cases, is also governed by the provision that reads as follows:

* * * "Provided, that the provisions of this section shall not apply to any officer who is a witness in any case where the residence of such officer is five miles from the place where the trial or coroner's inquest is held, or where the grand jury is in session: *"

By this provision which covers state officers, which would be a highway patrolman, the provision of this section would not apply where the officer is a witness in any case where the residence of such officer is five miles from the place of the trial. This section should be construed that mileage in the case of police officers should be computed from the place of residence to the place of trial and return to the place of residence.

It will be also noticed that under section 11, Session Laws of 1931, page 234, that 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.

In reading the two sections together, that is section 11, Session Laws of Missouri, 1931, page 234, and section 3837 R. S. Missouri, 1929, the patrol officers should only be allowed mileage in the case from their place of residence to the place of trial and their return and not from any other place in the state.

The duties of the Prosecuting Attorney, and the Judge of the trial court in certifying a fee bill is set out in section 3844, R. S. Missouri, 1929, which reads as follows:

"When a fee bill shall be certified to the state auditor for payment, the certificate of the judge and prosecuting attorney shall contain a statement of the following facts: That they have strictly examined the bill of costs; that the defendant was convicted or acquitted, and if convicted, the nature and extent of punishment assessed, or the cause continued generally, as the case may be; that the offense charged is a capital one, or punishable solely by imprisonment in the penitentiary, as the case may be; that the services were rendered for which charges are made, and that the fees charged are expressly authorized by law, and that they are properly taxed against the proper party, and that the fees of no more than three witnesses to prove any one fact are allowed. In cases in which the defendant is convicted, the judge and prosecuting attorney shall certify, in addition to the foregoing facts, that the defendant is insolvent, and that no costs charged in the fee bill, fees for board excepted, were incurred on the part of the defendant."

In that section it will be noticed the certificate of the judge and prosecuting attorney shall contain a statement showing that the fees charged are expressly authorized by law, and that the fees of no more than three witnesses to prove any one fact are allowed. It is discretionary with the judge of the trial court to limit the payment of the costs of more than three witnesses to prove any fact, but more than three witnesses may be used in the proving of any one fact but only the witness fees of three witnesses should be allowed as costs in the fee bill for the proving of any one fact.

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It was so held in the case of State vs. Mahan, 267 S. W. 866, l. c. 867, where the court said:

"It is claimed the court erred in refusing to allow the defendant to introduce more than three witnesses as to the reputation of Melton for being a dangerous character. It is true the court has no right to limit the number of witnesses which the defendant may summon in his behalf. State ex rel. v. Gideon, 119 Mo. 94, 24 S. W. 748, 41 Am. St. Rep. 634. Section 4193, R. S. 1919, does not limit the number of witnesses which may be produced in proof of any specific facts, but simply limits the assessment of costs in such case."

CONCLUSION

In view of the above authorities, and especially the Highway Patrol Act, which states that the "members of the patrol shall have the powers now or hereafter vested by law in peace officers, except the serving or execution of civil process"; and, also, since the Highway Patrol Act states, "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", the State Highway Patrol would be entitled to the same fee as the sheriff while acting as an officer and also the same fees as a witness.

It is further the opinion of this department that mileage should only be computed by the State Highway Patrol as a peace officer, from the place of apprehension of the defendant without a warrant to the place of trial, and if the State Highway Patrol is acting merely as witnesses they are only entitled to mileage from the place of residence of the witness to the place of trial.

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and return to the place of residence, where the trial is held more than five miles from the place of residence, and regular witness fees.

Respectfully submitted,

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APPROVED:

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