

CRIMINAL COSTS: Sheriff is not entitled to mileage fees for a deputy sheriff for the apprehension of a prisoner before conviction.

March 10, 1939

3-13

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri



Dear Mr. Smith:

This is in reply to your request for an opinion under date of March 6th, which reads as follows:

"We are submitting to you two supplemental criminal cost fee bills from Phelps County, Missouri, in the above mentioned cases, and would like to have an opinion from your office in regard to the State's liability for payment of same. We give you information in regard to the items listed, to-wit:

In Case No. 2529 a complaint was filed against the defendant in Justice of the Peace Court in Phelps County, Missouri, and a state warrant was issued by the Justice and handed to Sheriff Fred C. King of Phelps County to serve. The defendant was apprehended outside of the State of Missouri. The prisoner waived extradition and was returned by Sheriff King to Phelps County, Missouri. The Sheriff has submitted a relief claim to the Legislature for mileage and expenses outside of the State in this case. The 1248 miles at 5¢ per mile listed on the cost bill for Sheriff's fees in Justice of the Peace Court is for mileage of the Sheriff from Phelps County, Missouri to the Missouri state line and

return. The 1248 miles at 5¢ per mile for deputy sheriff fees is also mileage from Phelps County, Missouri to the Missouri state line and return in assisting the Sheriff in the arrest and return of said prisoner. The 624 miles at 5¢ per mile Sheriff fees for prisoner is mileage on prisoner from the Missouri state line back to Phelps County, Missouri.

In Case No. 2528 the circumstances are very much the same as those in No. 2529, except that the defendant escaped jail while awaiting trial on the first charge and was later apprehended in a foreign state and the Sheriff was again given a state warrant from Justice Court and went to the foreign state and brought the prisoner back to Phelps County for trial on a charge of breaking jail.

We desire to have your opinion in regard to the State's liability for payment of each of the items listed on these bills, * * "

Section 11791, R. S. Mo. 1929, partially reads as follows:

"The sheriff or other officer who shall take a person, charged with a criminal offense, from the county in which the offender is apprehended to that in which the offense was committed, or who may remove a prisoner from one county to another for any cause authorized by law, or who shall have in custody or under his charge any person undergoing an examination preparatory to his commitment more than one day for transporting, safe-keeping and maintaining any such person, shall be allowed by the court, having cognizance of the offense,

one dollar and twenty-five cents per day for every day he may have such person under his charge, when the number of days shall exceed one, and five cents per mile for every mile necessarily traveled in going to and returning from one county to another, and the guard employed, who shall in no event exceed the number allowed the sheriff, marshal or other officer in transporting convicts to the penitentiary, shall be allowed the same compensation as the officer.

Under this part of the section the fees are allowed the sheriff who shall take a person charged with a criminal offense before conviction from one county to another. Under this section, he is entitled to 5¢ per mile going and returning from one county to another. It will be noticed under this section that the guard employed shall, in no event, exceed the number allowed for transporting convicts to the penitentiary.

Section 11791, R. S. Mo. 1929, also partially reads as follows:

"When three or more convicts are being taken to the penitentiary at one time, a guard may be employed, but no guard shall be employed for a less number of convicts except upon the order, entered of record, of the judge of the court in which the conviction was had, and any additional guards employed by order of the judge shall, in no event, exceed one for every three prisoners; * * "

Under this part of Section 11791, the number of guards that are allowed only applies to the taking of prisoners after conviction. It will be noticed under this part of the section that no extra guard shall be employed for a less number than three convicts, except by the order of the judge

of the court of record. This part of the section only applies to the taking of convicts to the penitentiary after conviction and does not apply to the facts of the case set up in your request. Under the facts in the case set up in your request, the fees claimed by the sheriff accrued before conviction.

Section 11791, R. S. Mo. 1929, partially provides:

" * * the sum of five cents per mile for each mile traveled, while being taken to the penitentiary, shall be allowed to the sheriff to cover all expenses of each convict while being taken to the penitentiary; * * * "

This section provides a payment of 5¢ per mile for each mile traveled while being taken to the penitentiary to cover all expenses of each convict. Under this part of the section, the sheriff is allowed 5¢ per mile from the place of apprehending the prisoner to the place of confinement. There is no provision in Section 11791 for the allowance or the use of a deputy sheriff in the taking of a prisoner from one county to another before conviction. Under the facts stated in your request, the sheriff himself is entitled to 838 miles traveled at 5¢ per mile, also he is entitled to the fees of 5¢ per mile for the upkeep of the prisoner from the state line back to the courthouse of Phelps County, this being the fees allowed under case No. 2528. The same rule applies to case No. 2529 which would allow the sheriff 5¢ per mile from the county seat to the state line and return to the county seat with the prisoner. There is no provision for the use of a deputy sheriff in Section 11791, supra, under the facts in this case. The sheriff is also allowed 5¢ per mile for the upkeep of the prisoner from the state line back to the county seat of Phelps County.

Nowhere in Section 11791, R. S. Mo. 1929, can any authorization be pointed to allowing a guard for the apprehension of one prisoner before conviction.

The fees of sheriffs are specifically set out in crimi-

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nal matters under Sections 11791 and 11792.

Unless the authorization of any fees is set out in the two above sections, which applies to criminal matters only, it would be unlawful to allow any other fees.

Section 11793, R. S. No. 1929, reads as follows:

"No sheriff or ministerial officer in any criminal proceeding shall be allowed any fee or fees for any other services than those in the two preceding sections enumerated, or for guards not actually employed."

CONCLUSION

In view of the above authorities, it is the opinion of this department that the sheriff of Phelps County is entitled to 5¢ per mile actually traveled from the county seat of Phelps County to the state line and return to the county seat. Also, the sheriff, under the above authorities, is entitled to 5¢ per mile for the upkeep and expenses involved in bringing the prisoner from the state line back to the county seat of Phelps County.

It is further the opinion of this department that under the facts set out in your request, which is an apprehension before conviction, the sheriff is not entitled to mileage or fees for a deputy sheriff as a guard. This applies to case No. 2528 and case No. 2529.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

J. W. BUFFINGTON
(Acting) Attorney General

WJB:RT