

CONSTABLE:

Entitled to 10¢ per mile for serving court processes when arresting a person in another county.

May 3, 1939



Honorable George H. Skidmore
Assistant Prosecuting Attorney
Greene County
Springfield, Missouri

Dear Sir:

We acknowledge your request for an opinion dated April 5, 1939, which reads as follows:

"I would like an opinion from your office as to the proper mileage a constable should receive for going into another county in the state and returning a person charged with a felony. Some of our constables have been under the impression that they are entitled to receive 10¢ per mile for each mile actually traveled, basing their contention on Section 11777, R. S. 1929, which allows a constable 10¢ for each mile actually traveled in serving any process.

"I am of the opinion that Section 11791, while it does not mention constable by name, applies to a constable as well as any other officer and allows him only 5 ¢ per mile.

"No doubt you have already had occasion to give an opinion on this matter, and I would very much like to be advised as to your judgment."

Black's Law Dictionary citing Blackstone's Commentaries defines the term "constable" at English Common Law thus:

"A public civil officer, whose proper and general duty is to keep the peace within his district, though he is frequently charged with additional duties."

Section 11756 R. S. Mo. 1929 provides the general power of a constable in serving processes and reads:

"Constables may serve warrants, writs of attachments, subpoenas and all other process, both civil and criminal, and exercise all other authority conferred upon them by law throughout their respective counties."

Although it would be unusual, a constable may be duty bound to travel miles, even into other counties, to effect an arrest in criminal cases, sometimes with and sometimes without criminal process. (See Sections 3418, 3467, 3469, 3479, 3492, 3494 and 3566 R. S. Mo. 1929.)

The question of fees due a public officer for doing his statutory duty is well settled in Missouri. Only when a public officer can put his finger on a statute allowing a fee is said officer entitled to his costs for official service, otherwise, he is bound to do his official duty gratuitously.

46 Corpus Juris, page 1014, Section 233 reads as follows:

"The person rightfully holding an office is entitled to the compensation attached thereto; this right does not rest upon contract, and the principles of law governing contractual relations and obligations in ordinary cases are not applicable. Public officers have no claim for official services rendered except where, and to the extent that, compensation is provided by law, and, when no compensation is so provided, the rendition of such services is deemed to be gratuitous. * * * *"

In the case of Houts v. McCluney 102 Mo. 13 l.c. 16, 14 S. W. 766, the Supreme Court said:

"* * * In the first place, no costs are allowed by the common law. They are, with us, creatures of the statute. They must be paid in the amounts and in the manner specified in the statute. * * *"

Chapter 84 R. S. Mo. 1929 entitled "Salaries and Fees" and Article 2 entitled "Fees, payment and disposition of" provide in Section 11776 as follows:

"The several officers hereinafter named, * * * * * shall be allowed such fees for their services rendered in discharging the duties imposed upon them by law as are hereinafter provided, * * * * *"

The Constables fees in general statute are allowable under the provisions of Section 11777 which provides in part:

"Constables shall be allowed fees for their services as follows: * * * * *
For each mile actually traveled in serving any process \$0.10
* * * * *"

Section 11791 R. S. Mo. 1929 provides by special statute for particular fees of a constable when going through another county and returning a prisoner charged with a felony, and reads:

"Sheriffs, county marshals or other officers shall be allowed fees for their services in criminal cases * * * * * 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, * * * * * shall be allowed by the court, having cognizance of the offense, one dollar and twenty-five cents per day for every

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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. One dollar and twenty-five cents per day, mileage same as officer, shall be allowed for board and all other expenses of each prisoner. * * * *"

CONCLUSION

Our Missouri code provides for a constable as an officer of the court to serve process and also prescribes certain mandatory duties connected with said office which entail gratuitous service and also a bond for the faithful performance of duties.

Under the particular facts stated in your request, it can reasonably be said that the constable serves the process and is entitled to his fees under the special statute, Section 11791, supra. We are of the opinion that the legislature intended an exception to the general fee statute for constables when performing this specially identified official service of going into another county to arrest a person charged with a felony.

We are of the opinion that the constable in your case is entitled to fees for a round trip of 5¢ per mile for himself, plus a round trip of 5¢ per mile for taking charge of the prisoner. As far as mileage fees are concerned, the total computes the same as the fee allowed by the general statute which is 10¢ per mile.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney-General

APPROVED:

HARRY H. KAY
(Acting) Attorney-General

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