

SHERIFF'S
FEES.

Fees of Sheriff for commitment in
cases where defendant is sentenced
to Alcoa.

August 25, 1943

Honorable Luther Young
Circuit Clerk
Kennett, Missouri



Dear Sir:

This is in reply to yours of recent date, where-
in you submit the following statement and request:

"State v. Hallett E. Hughes.

"The above named was sentenced to two (2)
years confinement at Alcoa, Missouri, on
his plea of Guilty for Grand Larceny.

"Among other items of costs in the Justice
Court were found the Sheriff's charge for
serving the enclosed process.

"Please favor us with your opinion as early
as possible relative to whether this charge
by the sheriff is proper. The sheriff
and I will both appreciate an early reply.

"I would also like to have your opinion
as to the correctness of the forms, also
the State's liability to the sheriff for
service on the forms enclosed."

With your request you enclosed two commitments ;
one used by a Justice of the Peace when a defendant
is brought before him, who is unable to furnish bond
to appear at a preliminary hearing; the other used
when the defendant is bound over to Circuit Court
and is unable to give bond for appearance in such
Circuit Court.

In your request you inquire as to the sufficiency
of the form of these commitments. We think they are
sufficient as to form.

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As to the authority to pay the Sheriff for services on these commitments, we find the rule to be that such fees are purely statutory and the officer must be able to put his finger on the statute authorizing such payment. Under Sec. 13413, R. S. 1939, the sheriff is entitled to a fee of \$1.00 for committing a person to jail.

On the question of whether the sheriff would be authorized to charge the commitment fee on the commitment when the defendant is committed, because he is unable to give bond to appear at the preliminary, we think the case of Thomas v. St. Louis, 61 Mo. 547, is in point. In that case the court said l. c. 548:

"The appellant, being county marshal of St. Louis County, and as such entitled to the same fees as are allowed to sheriffs in like cases, contends that when any person is arrested by him under a capias, and in default of bail is imprisoned by him in the county jail, to await examination by the proper magistrate, he thereby becomes entitled not only to the fees allowed for serving and returning the capias, but also to the fee of one dollar provided by the statute for committing any person to jail.

"We do not think so. It is the duty of a sheriff acting under a capias to arrest and safely keep the person therein named, and to have the body of such person when and where he shall be commanded by such writ; and the statute makes it the duty of all jailors to receive from the sheriff or other officers all persons who shall be apprehended by them for offences against this State. When a prisoner is arrested under a capias, he is held thereunder until he has been either bailed, committed or discharged; and until such prisoner is either bailed, committed or discharged, any imprisonment

of him in the county jail is at the discretion and for the protection of the officer executing the writ, as well as to secure the body of such prisoner, and is not a committing of such person to jail, within the meaning of the statute; and for the safe-keeping of any person in his custody undergoing an examination preparatory to commitment, he is entitled to a per diem allowance, where the number of days such person is so held exceeds one. (Wagn. Stat., 626, Sec. 14.)

"The words 'committing any person to jail,' relate to the execution by the sheriff of an order or warrant of commitment made or issued by some officer exercising judicial functions:"

This holding is followed with approval in State ex rel. v. Clark, 170 Mo. 76, and in State ex rel. Million v. Allen, Auditor, 187 Mo. 561, 564, the Court said:

"*** A commitment means a judicial order, and until such an order is made the person arrested is the sheriff's prisoner by virtue of the capias. (Thomas v. County of St. Louis, 61 Mo. 547.) After an order of commitment has been made by the court, the sheriff or jailer is only entitled to a sum not exceeding fifty cents a day for the board of the prisoner.***"

However, the cases cited above did not take in to consideration the statute which is now Sec. 3864 R. S. 1939, which is as follows:

"A magistrate may adjourn an examination of a prisoner pending before himself, from time to time, as occasion requires, not exceeding ten days at one time, and to the same or any different place in the county, as he deems necessary; and for the purpose of enabling the prisoner to procure the attendance of witnesses, or for other good and sufficient cause

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shown by said prisoner, said magistrate shall allow such an adjournment on the motion of the prisoner. In the meantime, if the party is charged with an offense notailable, he shall be committed; otherwise he may be recognized, in a sum and with sureties to the satisfaction of the magistrate, for his appearance for such further examination, and not to depart without leave of said court, and for want of such recognition he shall be committed."

By this section it seems that the Justice may issue a commitment where the examination is pending, in case the defendant cannot give bond.

We think the examination is pending from the time the defendant is arrested until the examination is disposed of by the Justice. So the officer would in such case be entitled to the fee for the commitment issued under the this section. Then, if the defendant is bound over at the preliminary, Sec. 3877, R. S. Mo., 1939, applies. It is as follows:

"If the offense be notailable, or sufficient bail be not offered, the prisoner shall be committed to the jail of the county in which the same is to be tried, there to remain until he be discharged by due course of law."

By these provisions of the statute it seems that two commitments may be issued in a case where a person is arrested and bound over to Circuit Court on a felony charge.

C O N C L U S I O N

From the foregoing, it is the opinion of this department that the sheriff is entitled to a fee for serving two

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commitments where both are issued in a case when defendant is charged with a felony; the first commitment being issued under Sec. 3864, R. S. Mo., 1939, and the second being issued under Sec. 3877, R. S. Mo. 1939, supra.

Respectfully submitted,

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APPROVED:

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TWB:LeC