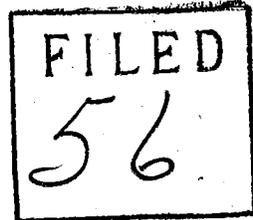


SHERIFFS: Can handle criminal cases in Justice Court and receive fees for services.

May 9, 1945.



Honorable Russell Mallett
Prosecuting Attorney
Jasper County
Joplin, Missouri

Dear Mr. Mallett:

Your letter of May 7, 1945, to the Attorney General, requesting an opinion, has been handed to the writer for reply. Your letter of request is as follows:

"I have had considerable controversy between the Sheriff of Jasper County and the Constable of Galena Township, Jasper County, Mo. The Constable maintains that all Justice Court criminal work should be handled by him, and that the Sheriff is not entitled to mileage when he works out of a Justice Court.

"Joplin being in Galena Township causes most of the contention for the reason that the police officers pick up and prepare cases for most criminal cases that are filed in the County and whichever officer gets this business appreciates it, for there is little work connected with it. The Sheriff contends that since these cases are prepared by the Police Department, that he is entitled to half of them, even though most of them are handled through the Justice Courts at one stage or another.

"Please give me an opinion as to whether the Sheriff is entitled to handle criminal cases in the Justice Court, and if

so, whether he is entitled to fees for executing warrants and subpoenas and mileage in connection with the subpoenas and execution of warrants."

In your request are those two questions:

(1) Is the sheriff entitled to handle criminal cases in a Justice Court?

(2) If so, is he entitled to fees for executing warrants, subpoenas and mileage for serving same?

Section 3808, Chapter 30, Article 4, R. S. Mo. Anno., 1939, provides:

"Upon the filing of a complaint before a justice of the peace, verified by the oath or affirmation of a person competent to testify against the accused, if the justice be satisfied that the accused is not likely to try to escape or evade prosecution for the offense alleged, it shall be his duty to forthwith forward such complaint to the prosecuting attorney; and it shall be the duty of the complainant to forthwith inform the prosecuting attorney what facts can be proved against the accused, and by what witnesses, and the residence of such witnesses; and if, after investigation of such facts, the prosecuting attorney be satisfied that an offense has been committed, and that a case against the accused can be made, it shall be his duty to immediately file his information before the justice taking the complaint, and give to said justice a list of the witnesses to be subpoenaed on the part of the state; and upon the filing of the information by the prosecuting attorney, as herein provided, with the justice of the peace, or upon the filing of an information by the prosecuting attorney upon his own information

and belief, without complaint of a private individual having previously been filed, it shall be the duty of the justice to forthwith issue a warrant for the arrest of the defendant, directed to the sheriff of the county or constable of the township, or, if no such officer is at hand, then to some competent person who shall be specially deputed by the justice to execute the same, by written indorsement to that effect on such warrant,"

Section 3809 of Chapter 30, Article 4, R. S. Mo. Anno., 1939, reads as follows:

"If any justice of the peace shall have personal knowledge that any affray or breach of the peace is about to be committed, he shall issue his warrant as is directed in the preceding section; and if any such offense is committed, threatened or attempted in his presence, he shall immediately arrest the offender, or cause it to be done; and for this purpose no warrant or process shall be necessary, but the justice may summon to his assistance any sheriff, coroner or constable, and all other persons there present, whose duty it shall be to aid the justice in preserving the peace, arresting and securing the offenders, and all such as obstruct or prevent the justice or any of his assistants in the performance of their duties."

Section 13411, Chapter 99, Article 2, R. S. Mo. 1939, provides:

"Fees of sheriffs shall be allowed for their services as follows:

* * * * *

"For serving every summons or original writ and returning the same for each defendant 1.00

* * * * *

"For each mile actually traveled in serving any venire summons, writ, subpoena or other order of court when served more than five miles from the place where the court is held, provided that such mileage shall not be charged for more than one witness subpoenaed or venire summons or other writ served in the same cause on the same trip . \$0.10

* * * * *

"For summoning each witness50
"For return of non est on a subpoena25

* * * * *

We are unable to find any law indicating a division of the service of warrants in criminal cases in the Justice Court between a sheriff and constable. In view of the fact that either the constable or the sheriff can serve such warrants as are directed to him, it would appear that the Justice of the Peace can assign as many of the same as he may choose to either officer. Neither officer is entitled to demand any particular amount or number of said warrants.

Conclusion

In view of the foregoing, it is the opinion of this Department that a sheriff may serve warrants in a criminal case, which are directed to him by a Justice of the Peace, and also serve subpoenas in criminal cases in a Justice of the Peace Court, and that he is entitled to fees and mileage for such service.

Respectfully submitted,

GORDON P. WEIR
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General