

SHERIFFS: Fees allowed for summoning petit jury.

September 25, 1945



Honorable G. Logan Marr
Prosecuting Attorney
Versailles, Missouri

Dear Sir:

Reference is made to your letter of September 17, 1945, requesting an official opinion of this office, and reading as follows:

"There has been some question raised about the charges made by the sheriff concerning the summoning of the petit jury of the circuit court for the September Term 1945. Apparently this is the first time the question has been raised within my experience.

"The circuit clerk issues a jury summons for the summoning of the petit jury. He informed me that no sheriff for at least fifteen years has made a return on the jury summons. The sheriff has put on his monthly bill to the county court a charge for summoning the jury for the term of court, and made a flat charge for the service. The charge has been around \$34.00 to \$36.00, for the service. No division of the fees and the mileage. The same has been paid from time to time without protest or question.

"The facts disclose that a separate jury summons has been mailed out for each regular juror and his alternate. Rarely has there been any service of jury summons by personal service. And now, the charge for jury service as a flat charge is made by the present sheriff in the sum of \$65.00.

"The County Court has balked on this bill, and turned same down, and tendered instead a warrant in the amount of \$36.00 for said service. This the sheriff refuses to accept. Now the question comes up, what would be a proper charge, for summoning a jury by mail?"

"If the bill presented shows no actual mileage, but just a flat sum, the court has assumed that the service is still by mail, and no mileage, in summoning the members of the panel by personal service.

"Would there be a difference in service by mail and service by personal service for summoning a petit jury?"

In the determination of fees to which an officer may be entitled for the discharge of his official duties, one paramount principle must be borne in mind. It is stated thusly in *Nodaway County v. Kidder*, 129 S. W. (2d) 897, l. c. 260:

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S. W. 552, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 845."

Keeping this rule in mind, we have examined the statutes relating to the fees of sheriffs and find that the following provisions of Section 13411, R. S. Mo. 1939, are pertinent to the question you have propounded:

"Sec. 13411. Fees of sheriffs. - Fees of sheriffs shall be allowed for their services as follows:

"For summoning a standing jury.....\$8.40

* * * * *

"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"

From the foregoing, we conclude that for such services in summoning a petit jury a sheriff is to be allowed fees of \$8.40 plus mileage at the rate of 10¢ per mile actually traveled. The mileage fee is, of course, subject to the proviso that such venire summons be served more than five miles from the place where the court is held, and is further subject to the proviso that such mileage shall not be charged for more than one venire summons served on the same trip.

As to the collateral question relating to the fees to be allowed when personal service is not made, but the venire summons is simply mailed, we believe the answer to be found in Section 709, R. S. No. 1939, which reads, in part, as follows:

" * * * And the clerk of the court for which the jury is drawn shall immediately thereafter issue a summons to the sheriff of the county, directing him to summon the persons thus drawn as petit jurors to appear on such day of the term of such court as shall be named in such summons by the clerk of said court to serve as petit jurors; and it shall be the duty of the sheriff to make service of such process at least ten days before the first day of the term of court for which such persons are drawn, which summons shall be served by reading the same to the person so summoned or by leaving a copy of the summons at his usual place of abode with some member of the family over fifteen years of age, except in such cases as may be hereafter provided."

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From the plain wording of the above statute, it is apparent that, a mode of service of the venire summons having been prescribed, service in any other fashion would be a nullity so far as entitling the sheriff to his fees for such purported service. Such being the case, we conclude that service by the method prescribed in the above statute is the only method by which a sheriff may serve the venire summons and create any liability upon the county for allowance of his fees.

CONCLUSION

In the premises, we are of the opinion that for his services in summoning a petit jury, a sheriff is to be allowed the sum of \$8.40 plus 10¢ per mile for each mile actually traveled in serving the venire summons, provided that such summons be served more than five miles from the place where court is to be held, and further provided that such mileage shall not be charged for more than one venire summons served on the same trip.

We are further of the opinion that in the event service of the venire summons be had by mail, the sheriff is not entitled to any fees whatever.

Respectfully submitted,

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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