

OFFICERS)
SALARIES AND FEES)

Sheriff cannot be paid mileage for travel beyond the State for the purpose of returning a prisoner who has waived extradition.

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Honorable Herbert S. Brown
Prosecuting Attorney
Trenton, Missouri

Dear Sir:

We have your letter of recent date, which reads as follows:

"It is requested that your office furnish me an opinion relative to the question hereinafter set forth in this letter.

I have recently had the matter come up wherein a fugitive from justice in this county was captured in the State of Iowa and advised the Iowa authorities that he was willing to waive extradition to the State of Missouri. This being true, there was no necessity to institute extradition proceedings, and send my Sheriff to the State Capitol to get an extradition warrant from the Governor, and then to have the Sheriff go to the Governor of Iowa and get his consent to the extradition, and then return the prisoner to Missouri, as all that was necessary for the Sheriff to do was to go to Iowa and return the prisoner.

Sections 3976 and 3977, Revised Statutes of Missouri, 1939, provide that where formal extradition proceedings are instituted, the expenses thereof may be allowed and paid out of the State Treasury.

Sections 13411 to 13414, Revised Statutes of Missouri, 1939, provide that Sheriffs are allowed mileage in certain cases, including mileage for the arrest of persons charged with crime. However, there is no provision in the law that a Sheriff is

allowed mileage for trips outside the State of Missouri to return fugitives, and my Sheriff informs me that he has previously had such fees, where he has made claim for them, turned down by the State Auditor.

In the case which I recently had, and which is abovementioned, the Sheriff went from Trenton, Mo. to Indianola, Iowa, to return this fugitive, and as this fugitive waived extradition, it was not necessary to institute extradition proceedings. However, as I understand the law, the Sheriff can only claim mileage from Trenton, Mo. to the Iowa line, whereas in fact he had mileage from the State line on to Indianola, Iowa. This procedure saved the necessity of going to Jefferson City and instituting formal extradition proceedings, obtaining an extradition warrant from the Governor, and then proceeding to the State Capitol of Iowa and getting the consent of the Governor of Iowa and then going on to pick up the fugitive. Although this method was much cheaper, there appears to be no provision for the Sheriff obtaining mileage for his expenses past the State line.

Therefore, I would appreciate your office advising me if there is any provision in the law, which apparently there is not or which I have been unable to find, which would authorize a Sheriff of Missouri to obtain mileage for distances covered outside the State of Missouri to return a fugitive who has waived extradition, and, therefore, no extradition proceedings or Governor's warrant, was necessary."

To answer your question, we must turn to the statutes of the state, for the fees and compensation of all public officers are matters controlled entirely by statutes. In Maxwell v. Andrew County 347 Mo. 156, 146, S.W. 2d 621, 625, the Supreme Court said:

"It is well established law that the right of a public officer to be compensated by salary or fees for the performance of duties imposed on him by law does not rest upon any theory of contract, express or implied, but is purely a creature of the statute."

So also in *Nodaway County v. Kidder* 344 Mo. 795, 129 S.W. 2d 857, 860, the Supreme Court said:

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment."

Unless, therefore, there are statutes allowing the sheriff mileage for the trips you mentioned in your letter, he cannot be paid such mileage.

Section 3976 R. S. Mo. 1939 provides for the extradition of a person charged with a crime in this state who has been apprehended in another state. Said section reads as follows:

"Whenever the governor of this state shall demand a fugitive from justice from the executive of another state or territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the state, to some messenger, commanding him to receive such fugitive and convey him to the sheriff of the county in which the offense was committed, or is by law cognizable."

Section 3977 provides for the payment of the expenses of the messenger who is selected to return the prisoner to this state. Said section reads as follows:

"The expenses which may accrue under the last section, being first ascertained to the satisfaction of the governor, shall, on his certificate, be allowed and paid out of the state treasury, as other demands against the state."

We understand it is not claimed by the sheriff you mentioned in your letter that he might be entitled to mileage under the foregoing statutes, but these statutes become important in determining your question because they show that the Legislature has provided a method by which persons who return prisoners from another state into this state may be paid their expenses. In *Nodaway County v. Kidder*, supra, 129 S.W. 2d 1.c. 860, the Court said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer."

Since the foregoing two statutes provide a mode or manner by which persons may be paid their expenses for returning prisoners from another state to this state, neither the sheriff nor any other person can be paid in any other manner. The sheriff rendered valuable services, but he must be presumed to have rendered them gratuitously unless compensation or reimbursement is provided by statute.

Section 13413 R. S. Mo. 1939 provides for the fees which a sheriff may be allowed for services in criminal cases. The section is long and will not be quoted here, but suffice it to say that said section does not provide any fee or compensation for the mileage of the sheriff mentioned in your letter.

Section 13414 R. S. Mo. 1939 reads as follows:

"Sheriffs, county marshals or other officers shall be allowed for their services in criminal cases and in all proceedings for contempt or attachment as follows: Ten cents 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."

Section 13414 does not cover the situation you mention in your letter, because when the sheriff was traveling through the other state to get the prisoner he was not serving any venire summons, writ, subpoena or other order of court. No court of this state could have issued him any writ or process which would have authorized him to execute it in another state. The Supreme Court in the case of State ex rel v. Allen, 180 Mo. 27, 30, said:

"It is axiomatic under our complex system of government that the laws and judgments and powers conferred by a State have, proprio vigore, no extra-territorial force. (McGinnis v. Foundry Co., 174 Mo. 225.) Therefore a writ issued by a court can only be executed within the jurisdiction of the court, and confers no authority upon anyone to attempt to execute it outside of the jurisdiction of the court."

Section 13415 R. S. No. 1939 should be noted also. It 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."

So it is provided that the only fees and mileage which a sheriff may claim in a criminal case are those set forth in Sections 13413 and 13414, supra. The Supreme Court held in Maxwell v. Andrew County, supra, that Section 13415 in effect limited the fees of a sheriff in criminal cases to those set out in Sections 13413 and 13414. In that case the Court said, 146 S. W. 2d 1.c. 626:

"The statutes regulating the compensation of sheriffs expressly provide for the payment of mileage in certain cases. For example, such provision is made when the officer is serving subpoenas or writs or transporting a prisoner to the penitentiary. The specification in the statute of instances when

mileage is to be paid and money lawfully be received by the sheriff constitutes an implied prohibition upon its collection in other instances. Particularly is this true when we consider the provisions of S. 11793, specifically limiting the compensation to be received by sheriffs."

It thus becomes clear that the statutes do not make any provision for the sheriff to be paid mileage for going beyond the State of Missouri to return a prisoner who has waived extradition. The justice or injustice, wisdom or folly of the statutes as we find them is not a question for those who interpret and enforce them, but such questions are for the Legislature.

Conclusion

It is, therefore, the opinion of this department that a sheriff cannot be paid mileage for travel beyond the State of Missouri for the purpose of returning to this state a prisoner who has waived extradition.

Yours very truly,

Harry H. Kay
Assistant Attorney General

APPROVED:

J. E. Taylor
Attorney General

HHK/vlv