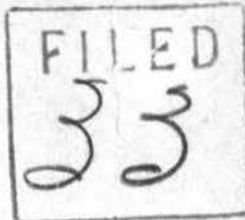


EXTRADITION: Sheriffs may retain expenses incurred as a
SHERIFFS: messenger of the Governor in returning fugitive
from another state or territory.



August 2, 1948

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Honorable Charles E. Ginn
Prosecuting Attorney
Lawrence County
Mt. Vernon, Missouri

Dear Mr. Ginn:

This is in reply to your request for an opinion, which we will restate for the purpose of brevity:

Is the sheriff in a third class county entitled to retain expenses incurred by him in extradition cases?

This question has been previously answered in this office concerning cases wherein the sheriff travels beyond the state of Missouri for the purpose of returning to this state a person who has waived extradition. In an opinion rendered to the Honorable Herbert S. Brown, Prosecuting Attorney of Grundy County, it was held that the sheriff could not be paid mileage for travel beyond the state of Missouri.

In this opinion the question which will be considered will be whether or not a sheriff who has been designated a messenger by the Governor may retain the expenses incurred by him in returning a fugitive from another state or territory. Section 3976, R. S. Mo. 1939, provides:

"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, R. S. Mo. 1939, provides:

"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."

In the case of State ex rel. See v. Allen, 79 S. W. 164, 180 Mo. 27, See, a marshal of the Supreme Court, was designated as messenger by the Governor to return a fugitive from the State of Idaho. The court held that in that instance See was not acting in his capacity as marshal in going to Idaho and returning the fugitive, but was acting in the capacity of a messenger for the Governor. The court discussed the general proposition that the laws of the State of Missouri have no extraterritorial force so that when an officer, such as a marshal or sheriff, is without the state he has no authority to act in his capacity as such.

In Sections 13547.301-13547.308, Mo. R. S. A., there are to be found the provisions for the payment of the salary and compensation of sheriffs of third class counties. Section 13547.303 provides that the sheriff shall pay over to the county treasurer all fees arising in connection with the investigation, arrest, prosecution, etc., of persons accused of or convicted of a criminal offense.

Section 13, Article VI of the Constitution of 1945, provides that state and county officers charged with the investigation, arrest, prosecution, etc., of persons accused of or convicted of a criminal offense shall be compensated for their official services by salaries, and that all fees should be paid into the general revenue fund entitled to receive the same as provided by law.

From the principles enunciated and invoked in the above cases, it is clear that the sheriff is not acting in his official capacity when serving as a messenger of the Governor. Therefore, the expenses which he incurs when acting in that capacity should be paid to him and may be retained by him upon compliance with the provisions of Section 3977, supra.

Conclusion.

It is the opinion of this department that when a sheriff is acting as a messenger of the Governor in returning fugitives

Honorable Charles E. Ginn

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from another state or territory he is entitled to expenses incurred and may retain the same upon compliance with Section 3977, R. S. Mo. 1939.

Respectfully submitted,

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APPROVED:

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JRB:ml