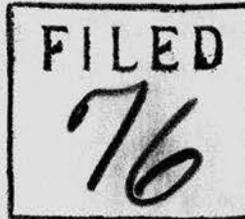


MAGISTRATE COURTS: The sheriff of a fourth-class county is under
SUMMONING JURORS: duty to summon jurors when ordered to do so by
the magistrate.

September 17, 1951

9-17-51

Mr. Allen Rolston
Prosecuting Attorney
Schuyler County
Lancaster, Missouri



Dear Mr. Rolston:

We have given careful consideration to your recent request for an official opinion, which request is as follows:

"Please let me have your opinion as to whether or not the sheriff of a fourth class county has the right or duty to summons jury in the magistrate court, and if so, what fees and mileage would be allowed."

Magistrate courts were established in Missouri by mandate of the new Constitution of 1945. The statute governing the selection of jurors for magistrate courts was enacted by the legislature in 1947 and is now contained in Chapter 499, RSMo 1949.

The regular method for selecting such juror calls for twenty-four names to be taken from a list prepared by the board of jury commissioners, and Section 499.060 provides that the persons thus selected shall be summoned by registered mail.

Section 499.070, RSMo 1949, is as follows:

"If any juror summoned is excused or disqualified or if the summons mailed him cannot be delivered, the magistrate may order the sheriff or other officer authorized by law to summons such number of jurors as may be required either for the regular panel or for any case and such officer shall summons such jurors in the same manner as is required in summoning grand or petit juries."

Mr. Allen Rolston

Under this section the sheriff may be called upon to summon additional jurors when needed for service in a magistrate court. When so ordered by the magistrate, the sheriff is under duty to "summons such jurors in the same manner as is required in summoning grand or petit juries."

Section 499.150, RSMo 1949, is as follows:

"In any county now or hereafter having a population of less than seventy thousand inhabitants, the magistrate or magistrates may, by order of record, direct that jurors be selected by issuing a summons to the sheriff or other officer ordering him to summons the appropriate number of jurors. In such event, each juror summoned shall receive one dollar per day for every day he may actually serve as such, and five cents for every mile he may necessarily travel going from his place of residence to the place where the trial is held, and such fees and expenses shall be taxed as costs in the particular case tried. In the event that the magistrate or magistrates make the order herein provided for, the order shall have the effect of suspending the provisions of sections 499.010 to 499.160 in the selection of the general county panel and the selection of jurors thereunder; and such provisions shall remain suspended until such order is rescinded."

The magistrate is herein authorized to suspend the employment of jurors selected by the board of jury commissioners by ordering the sheriff to summon a sufficient number of jurors to serve in the court. The sheriff when so ordered, is under duty to carry out the directions of the magistrate.

The fees and mileage allowed a sheriff for summoning jurors to serve in a magistrate court are determined by the general laws pertaining to sheriffs as incorporated in Sections 57.280, 57.290 and 57.300, RSMo 1949.

CONCLUSION

It is the opinion of this office that the sheriff of a fourth-

Mr. Allen Rolston

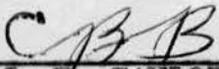
class county is under duty to summon jurors for service in the magistrate court when ordered to do so by the magistrate under either Section 499.070 or Section 499.150, RSMo 1949.

It is also our opinion that the sheriff for summoning such jurors should be allowed the usual fees and mileage as provided in Sections 57.280, 57.290 and 57.300, RSMo 1949.

Respectfully submitted,

B. A. TAYLOR
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

BAT:fh