

WITNESS FEES:
MAGISTRATE COURT:

Witnesses attending the magistrate court shall be allowed such fees as are set forth in Section 491.280, RSMo 1949.

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Honorable Gene Frost
Prosecuting Attorney of
Jasper County
Joplin, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this department. Your request reads as follows:

"At the request of our Circuit Clerk here in Jasper County, I respectfully request a ruling upon the construction of Section 491.280, Revised Statutes, 1949, in regard to Fees of Witnesses in Magistrate Court. We have a copy of your opinion, dated July 25, 1947, in which you hold this fee is \$1.00.

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"The same Clerk also requests a direct ruling upon the taxing of costs for board of prisoner held in the County Jail upon the revoking of a parole, until the Sheriff can take him to the State Penitentiary.

"The State Criminal Cost Clerk has supplied us with a copy of an opinion of the Attorney General, dated August 10, 1939, wherein he rightfully holds that the State is not liable for the expense of returning a prisoner to Johnson County upon revoking a parole. As Section 550.010, provides that board of prisoner shall be

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paid by the State, either upon conviction or acquittal, without exception. This opinion states that in the event of the revoking of a parole the State is liable for the expense of delivering the defendant to the Penitentiary, and we cannot see how the board of the prisoner in the County Jail after revocation of parole pending the delivery to the Penitentiary can be separate from the delivery expense, one as illegal and the other as legal."

Your first inquiry deals with the amount of the fees allowed witnesses for their services in the magistrate court. Section 491.280, RSMo 1949, provides for witness fees as follows:

"1. Witnesses shall be allowed fees for their services as follows:

- (1) For attending any court of record, reference, arbitrators, commissioner, clerk or coroner, at any inquest or inquiry of damages, within the county where the witness resides, each day, one dollar and fifty cents;
- (2) For like attendance out of the county where witness resides, each day, two dollars;
- (3) For traveling each mile in going *and* to and returning from the place of trial, five cents;
- (4) For attending under the law to perpetuate testimony, the same fees as are allowed for attending a court of record in like cases; but witnesses attending in more than one case on the same day and at the same place shall only be allowed fees in one case; and any witness who shall claim fees for attendance in two or more cases on the same day and at the same place shall not be allowed any fees that day.

"Each witness shall be examined on oath by the court, or by the clerk when the

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court shall so order, as to the number of days of his actual necessary attendance, under subpoena or recognizance, and the number of miles necessarily traveled; and in every case where a witness shall not, as such, actually and necessarily attend such court, and withdraw himself from his business during the full time for which pay is claimed, he shall not be allowed for more than one day's attendance."

This section provides that a witness shall be allowed one dollar and fifty cents per day for attending any court of record within the county that he resides and two dollars per day for attending any court of record out of the county where he resides.

Magistrate courts of this state are courts of record. Section 517.050, RSMo 1949, so provides as follows:

"Magistrate courts shall be courts of record. * * *"

Section 21, Article V, of the Constitution of Missouri, 1945, provides that the General Assembly shall provide for the administration of magistrate courts consistent with this Constitution and since we have been unable to find any provision of law specifically setting out the fee allowed witnesses attending the magistrate court, we are of the opinion that Section 491.280 controls magistrate courts, as courts of record, and witnesses attending said court are entitled to fees therein provided.

The opinion to the Honorable Forrest Smith, State Auditor, July 25, 1947, holding that a witness in the magistrate court was entitled to one dollar for each day in attendance, referred to in your opinion request was based upon Section 20, Article V, of the Constitution of Missouri which provides that until otherwise provided by law the practice, procedure, administration and jurisdiction of magistrate courts shall be as provided by law for justices of the peace, and Section 13420, R. S. Mo 1939, which sets forth the fees allowed witnesses for attending before a justice of the peace. Subsequent to this opinion, Section 13420 was amended by omitting the portion relating to witness fees before a justice of the peace and is now carried in the revision as Section 491.280, RSMo 1949, supra, therefore, said opinion is no longer controlling.

You next inquire as to the state's liability for the board of a prisoner in a county jail after revocation of parole and

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prior to delivery to the State Penitentiary. You have referred to an opinion of this department to the Honorable Forrest Smith, State Auditor, August 10, 1939, which holds that in the event a person convicted of an offense, for which the punishment provided is sentence to the penitentiary, is unable to pay the costs, the state is liable for costs incurred in the prosecution up to and including judgment and sentence and the further fee which accrues to the sheriff for transporting the prisoner to the penitentiary under the commitment order, and none other.

We have reconsidered this opinion (copy attached), and believe that it is correct and sufficient to answer your question.

We do not believe that the opinion referred to holds that the fee which accrues to the sheriff for transporting a prisoner to the penitentiary is part of the costs of the prosecution for which the state would be liable if the defendant is unable to pay. Therefore it is not necessary to separate the cost of boarding a prisoner in the county jail and the cost of delivering said prisoner to the penitentiary.

The fee which accrues to the sheriff for transporting a prisoner to the penitentiary is set out and provided by Section 57.290, RSMo 1949. The costs which you have referred to (boarding a prisoner in the county jail prior to delivery to the penitentiary) occur after judgment and sentence, and although the state is liable for the transportation fee by statute (not as part of the costs of prosecution), we are unable to find any provision of law making the state liable for the costs of boarding a prisoner in the county jail after judgment and sentence and prior to delivery to the penitentiary.

CONCLUSION

Therefore, it is the opinion of this department that witnesses attending the magistrate court shall be allowed for their services, the same fees as are provided for witnesses attending any court of record as set forth in Section 491.290, RSMo 1949.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
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