

SHERIFFS:
FEES AND SALARIES:
OFFICERS:

Sheriff not entitled to mileage for
arresting a person in the act of
committing a criminal offense
several miles from county seat and
bringing him to jail

February 4, 1953



Mr. Richard D. Moore
Prosecuting Attorney
Howell County
West Plains, Missouri

Dear Sir:

In December your predecessor requested an opinion of this department. We are assuming that you, as Prosecuting Attorney of Howell County, would be interested in receiving the opinion as requested, so we are submitting our opinion on the basis of the letter written to this office by your predecessor. That letter, in part, reads:

"Our sheriff has asked this office for an opinion as to fees in criminal cases on a matter which I am not sure of and I therefore submit the questions to your office and would like an opinion as early as convenient.

"(1) In case where the sheriff apprehends a subject in the act of committing an offense, say drunken driving or careless and reckless driving say 20 or 25 miles from the county seat, arrests him, brings him to jail that night and files complaint the next day, would he be entitled to a warrant and to charge mileage for bringing the prisoner to jail?

"(2) Where the Highway Patrol apprehends a subject in the commission of a crime and brings him and puts him in jail and files complaint against him, is it the duty of the Magistrate to issue a warrant in such a case and is the sheriff entitled to service and charge his regular fee for such service?"

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As we construe your first question, you have inquired whether or not the sheriff in your county would be entitled to receive mileage for bringing a prisoner to jail where the sheriff apprehends and arrests said prisoner in the act of committing an offense several miles from the county seat.

Regarding the compensation of sheriffs in counties of the third class, Section 57.360, RSMo 1949, in part, provides:

"The sheriff in counties of the third class shall receive annually for his official services in connection with the investigation, arrest, prosecution, custody, care, feeding, commitment and transportation of persons accused of or convicted of a criminal offense, the following sums: * * *
(Emphasis ours.)

Under the above section the sheriffs of third class counties are compensated by salary, as provided in the statute, based on the population of the county.

There are other statutes under which sheriffs are allowed mileage for their services in criminal cases. However, the statutes are specific in stating the purposes for which mileage is allowed. For example, Section 57.300, RSMo 1949, gives sheriffs mileage in serving venire summonses, writ, subpoenas or other orders of court when served more than five miles from the place where court is held.

The statute which touches more closely in covering the situation which you have presented is Section 57.430, Supp., RSMo 1951, which, in part, provides:

"In addition to the salary provided in Sections 57.390 and 57.400, the county court shall allow the sheriffs and their deputies, payable at the end of each month out of the county treasury, actual and necessary expenses for each mile traveled in serving warrants or any other criminal process not to exceed seven cents per mile, and actual expenses not to exceed seven cents per mile for each mile traveled, the maximum amount allowable to be seventy-five dollars during any one calendar month in

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the performance of their official duties in connection with the investigation of persons accused of or convicted of a criminal offense. When mileage is allowed, it shall be computed from the place where court is usually held, and when court is usually held at one or more places, such mileage shall be computed from the place from which the sheriff or deputy sheriff travels in performing any service. When two or more persons who are summoned, subpoenaed, or served with any process, writ, or notice, in the same action, live in the same general direction, mileage shall be allowed only for summoning, subpoenaing or serving of the most remote."

However, under the facts which you have presented in your first question, we do not believe that they would constitute an investigation for which the sheriff could be compensated under the above statute.

The Supreme Court of Missouri has many times held that for a public officer to be compensated for services rendered, such as a fee, salary or mileage, he must point to the statute authorizing such payment, and unless the statute clearly provides for such payment the services rendered by such public officer are deemed to be gratuitous. Thus, in *Nodaway County v. Kidder*, 344 Mo. 795, 129 S.W. (2d) 857, 860, the rule is stated as follows:

"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. *State ex rel. Evans v. Gordon*, 245 Mo. 12, 28 149 S.W. 638; *King v. Riverland Levee Dist.*, 218 Mo.App. 490, 493, 279 S.W. 195 196; *State ex rel. Wedeking v. McCracken*, 60 Mo.App. 650, 656.

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"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. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S.W. 655; Williams v. Chariton County, 85 Mo. 645."

Since under the rule as stated in the above case the statute must clearly authorize the payment of compensation or mileage and that the statute must be strictly construed against the officer, we must conclude, in answer to your first question, that there is no statute clearly authorizing mileage for the sheriff under the facts which you have presented.

In connection with the second question which you have presented, we are enclosing a copy of an opinion submitted to the Magistrate of Webster County under date of August 13, 1947, which we believe substantially answers your inquiry.

CONCLUSION

In the premises, it is the opinion of this department that a sheriff who arrests a person in the act of committing a criminal offense several miles from the county seat and takes him to jail would not be entitled to receive mileage for bringing such person to jail.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Frank Thompson.

Very truly yours,

JOHN M. DALTON
Attorney General

Enc.
(Opinion enc: Hon. Cline C. Herren)