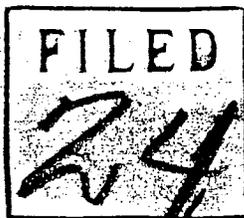


SHERIFFS: Sheriff in second class county should charge ten cents per mile for services in criminal and civil proceedings.



July 14, 1954

Honorable John E. Downs  
Prosecuting Attorney  
Buchanan County  
St. Joseph, Missouri

Dear Sir:

We have received your request for an opinion of this office, which request is as follows:

"This office would like your advice and opinion on the following matter:

"The sheriff of this county would like to know whether he should charge 10¢ or 7¢ per mile for each mile traveled serving any venue, summons, writs or other orders of the court when served more than five miles from where the court is held.

"We note that Section 57.280 entitled 'Fees of Sheriffs' states that he may charge 10¢ for such service and Section 57.300 states that a sheriff may charge 10¢ in criminal cases but Section 57.350 entitled 'Mileage Rates Allowed Class 2 Counties' states that the sheriff and his deputies shall be reimbursed out of the county treasury at the rate of 7¢ per mile for each mile actually traveled in the performance of their official duties.

"We would like to know what is proper for the sheriff of this county to charge, 10¢ or 7¢, and if he is allowed to charge 10¢, what happens to the other 3¢ which he is not paid by the County Treasurer?"

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Section 57.280, RSMo 1949, provides, in part, as follows:

"Fees of sheriffs shall be allowed for their services as follows:

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"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 . . . . . .10"

Section 57.300, RSMo 1949, provides:

"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 57.350, MoRS, 1953 Supp., provides:

"The sheriff and his deputies shall be reimbursed out of the county treasury, at the rate of seven cents per mile for each mile actually and necessarily traveled, in this state, in the performance of their official duties. 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

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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. At the end of each month, the sheriff and each deputy shall file with the county court an accurate and itemized statement, in writing, showing in detail the miles traveled by such officer, the date of each trip, the nature of the business engaged in during each trip, and the places to and from which he has traveled. Such statement shall be signed by the officer making claim for reimbursement, verified by his affidavit, and filed by him with the county court. Whenever claim for reimbursement is made by a deputy, his statement shall also be approved in writing by the sheriff. The county court shall examine every claim filed for reimbursement, and if found correct, the county shall pay to the officer entitled thereto, the amount found due as mileage."

Section 57.370, RSMo 1949, provides:

"It shall be the duty of the sheriff to charge, collect and receive, upon behalf of the county, every fee, penalty, charge, commission, and other money that accrue to him or his office in connection with criminal matters, and all such fees, penalties, charges, commissions, and money collected by him, shall, at the end of each month, be paid by him to the county treasurer, as hereafter provided."

Section 57.380, RSMo 1949, provides:

"It also shall be the duty of the sheriff to charge, collect and receive, on behalf of the county, every fee, penalty, charge, commission and other money that shall accrue to him or his office for official services rendered in civil matters, by virtue of any statute of this state, and all such fees, penalties, charges, commissions, and other money collected by him, shall at the end of each month be paid by him to the county treasurer, as hereafter provided, less that amount which he is herein authorized to retain. He shall not be entitled

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to collect the per diem allowed to the sheriff as a member of the board of equalization and board of appeals, as provided in section 138.020." (Emphasis ours.)

Section 57.340, MoRS, 1953 Supp., provides that the sheriff in second class counties of less than 100,000 population may retain from his civil fees an amount not to exceed \$3,900 for any year of his term.

Considering the above statutes together, it appears to us that the fees provided by Sections 57.280 and 57.300, supra, for mileage are the fees which the person liable for the costs in the action must pay. In criminal matters, such fee must, in accordance with Section 57.370, supra, be turned in to the county treasurer. In civil matters, the sheriff is permitted to retain such fee up to the limit provided by Section 57.340, supra.

Section 57.350, MoRS, 1953 Supp., fixes the rate of reimbursement by the county to the sheriff for the mileage traveled by him in the performance of his official duties. This section does not in any way purport to fix the amount which should be charged by the sheriff to the person liable for the costs in the particular case.

#### CONCLUSION

Therefore, it is the opinion of this office that the sheriff of second class counties should charge his mileage in civil and criminal actions in accordance with Sections 57.280 and 57.300, RSMo 1949, respectively, at the rate of ten cents per mile, although the sheriff's reimbursement from the county is, in accordance with Section 57.350, MoRS, 1953 Supp., at the rate of seven cents per mile.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON  
Attorney General

RRW:ml