

SHERIFFS: Sheriff of one county may employ sheriff of another county to act as guard in transporting prisoners to penitentiary, such guard to be paid as provided in Section 57.290, RSMo 1953. Cum. Supp.

May 4, 1955



Honorable Haskell Holman
State Auditor
State Capitol Building
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office, which request reads, in part:

"We have an appropriation for 'Costs in Criminal Cases - Transportation.' This appropriation is made for the purpose of paying sheriffs or other officers for transporting prisoners to the penitentiary after conviction and is made particularly under the provision of Paragraph 3, Section 57.290 RSMo 1949, and as amended Laws of Missouri 1953.

"The point which we wish clarified is that relating to authority for employment and payment for guard or guards. Is it permissible for the sheriff of one county to use the sheriff of another county to act as a guard in transporting a prisoner to the penitentiary after conviction, and is the state authorized to pay the per diem and mileage fee for a guard thus used?"

Paragraph 3 of Section 57.290, RSMo Cum. Supp. 1953, to which you refer, provides, in part, as follows:

"3. For the services of taking convicts to the penitentiary, the sheriff, county marshal or other officers shall receive the sum of three dollars per day for the time actually and necessarily employed

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in traveling to and from the penitentiary, and each guard shall receive the sum of two dollars per day for the same, and the sheriff, county marshal or other officer and guard shall receive seven cents per mile for the distance necessarily traveled in going to and returning from the penitentiary, the time and distance to be estimated by the most usually traveled route from the place of departure to the penitentiary; * * *. When three or more convicts are being taken to the penitentiary at one time, a guard may be employed, but no guard shall be employed for a less number of convicts except upon the order, entered of record, of the judge of the court in which the conviction was had, and any additional guards employed by order of the judge shall, in no event, exceed one for every three prisoners; * * *"

Under date of December 20, 1949, this office issued an opinion to J.L. Sturgis, assistant prosecuting attorney, Greene County, holding that under a substantially similar statute the sheriff may, of his own accord, employ a guard whenever he is required to transport three or more persons to the state penitentiary at one time, and if a lesser number of persons are being so transported, the sheriff may then employ such guards only upon order entered of record by the judge of the court in which conviction was had. A copy of this opinion is enclosed herewith. Also under date of February 23, 1950, this office issued an official opinion to Gordon J. Massey, prosecuting attorney, Christian County, which opinion held that the sheriff was not required to take a paid deputy sheriff and that a guard not a deputy sheriff is entitled to retain the compensation provided therefor. A copy of this opinion is likewise enclosed herewith.

You further inquire whether it is permissible for the sheriff of one county to employ a person who is the sheriff of another county as a guard in transporting prisoners to the penitentiary. We are unable to find any applicable provisions of law which would prohibit a sheriff of one county from employing a person who is the sheriff of another county as a guard, or any provision which would prohibit the sheriff of another county from accepting such employment. Consequently, we are of the

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opinion that such may be done, and that the state is authorized to pay such guard \$2.00 per day and seven cents per mile, as provided by Section 57.290, supra. Such person so employed would not be acting in his official capacity as sheriff, but merely as a guard.

CONCLUSION

Therefore, it is the opinion of this office that the sheriff of one county may employ a person who is the sheriff of another county to act as a guard in transporting prisoners to the penitentiary.

We are further of the opinion that the state is authorized to pay such person so employed \$2.00 per day and seven cents per mile, all as provided by Section 57.290, RSMo 1953 Cum. Supp.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Yours very truly,

John M. Dalton
Attorney General

DDG/vtl

Enclosures - 2

12-20-49 to J.L. Sturgis

2-23-50 to Gordon J. Massey