

SHERIFFS:  
SHERIFFS' FEES:  
FEES:  
COSTS:  
CRIMINAL COSTS:

Sheriff is not entitled to fees from the county for services in criminal matters.

FILED  
74

October 19, 1955

Honorable C. Frank Reeves  
Prosecuting Attorney  
Mississippi County  
Charleston, Missouri

Dear Sir:

You recently requested an opinion from this office concerning several questions propounded by the clerk of the circuit court. In the interest of brevity, we are restating the questions asked, which are:

1. May the sheriff recover from the county his statutory fees and mileage for summoning a grand jury?
2. May the sheriff recover from the county his fees for summoning witnesses before the grand jury?
3. May the sheriff recover from the county the statutory fee of \$3.00 per day for attendance on court when such attendance consists of custody of the grand jury?
4. May the sheriff recover from the county fees in a case commenced as a criminal case and thereafter transferred to the juvenile court because of the age of the defendant?
5. May the sheriff recover from the county his statutory fee of \$3.00 a day for attendance on the circuit court when the court, during said day, handles both civil and criminal matters?

The problems indicated by the above questions arise from the change made in the scheme of compensation in criminal matters by

*Questions to 3 & 4 have been withdrawn 11/3/60 J.M.R.  
See op of 141 written to W.R. Boyer 1/7/60  
10-1960*

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the new Missouri Constitution of 1945. That constitution contains a new section, Article VI, Section 13, which reads as follows:

"Compensation of officers in criminal matters - fees. - All state and county officers, except constables and justices of the peace, charged with the investigation, arrest, prosecution, custody, care, feeding, commitment, or transportation of persons accused of or convicted of a criminal offense shall be compensated for their official services only by salaries, and any fees and charges collected by any such officers in such cases shall be paid into the general revenue fund entitled to receive the same, as provided by law. Any fees earned by any such officers in civil matters may be retained by them as provided by law."

Prior to the time of the enactment of this section, sheriffs were compensated primarily by fees paid for services rendered by them, and these fees were payable either by the county or by the litigants upon whom costs were assessed. As will be seen, the above new provision in the 1945 Constitution effected a drastic change in this method of compensation of the sheriff for his services in criminal matters. Under this section the sheriff is limited to a salary payable by the state or county, and may not receive additional compensation by way of fees. Any fees which he collects he must, in turn, pay over to the proper treasury.

Pursuant to this constitutional provision the legislature, by Section 57.410 RSMo 1949, as amended Laws 1945 and 1949, provided for the transmission of any criminal fees collected by the sheriff to the county treasurer and, naturally, provided that the sheriff should not collect fees from the county when he would only turn around and pay such fees back to the county. This section provides:

"In all counties of the third and fourth classes, the sheriff shall charge and collect for and on behalf of the county every fee accruing to his office which arises out of his duties in connection with the investigation, arrest, prosecution, care, commitment and transportation of persons accused of or convicted of a criminal offense, except such

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criminal fees as are chargeable to the county. The sheriff may retain all fees collected by him in civil matters."

(Emphasis ours.)

The statutes providing for fees for sheriffs were originally enacted long before the above discussed new provision of the 1945 Constitution and, consequently, there are some apparent inconsistencies therein. We do not deem it necessary to determine whether these inconsistencies are real or merely apparent. However, as to your first question, Section 57.290, RSMo Cumulative Supplement 1953, provides that the sheriff shall receive a fee of \$4.20 for summoning a grand jury; even though this statute was reenacted in 1953, this provision is identically the same as was found in prior statutes and since Section 57.410 RSMo 1949, as above set out, prohibits the sheriff from collecting fees from the county the sheriff cannot now collect such fee from the county for summoning the grand jury.

As to mileage for summoning such grand jurors, Section 57.300 authorizes the sheriff to collect ten cents per mile when serving such venire summons but the case of Seeleck v. Gordon, 162 SW 629, 254 Mo. 471, holds that such mileage constitutes a part of the compensation of the sheriff, and, under the above-mentioned constitutional and statutory provisions the sheriff cannot collect such additional compensation in criminal matters from the county. However, Section 57.430 RSMo 1953 Cumulative Supplement, authorizes the county to allow the sheriff and his deputies "actual and necessary expenses for each mile traveled in serving warrants or any other criminal process not to exceed seven cents per mile." Under this section the sheriff can collect from the county his actual and necessary expenses for each mile traveled in summoning the grand jurors, not to exceed seven cents per mile but, as pointed out above, he cannot collect from the county the fee of ten cents per mile authorized by Section 57.300, supra.

Your second question has to do with fees to the sheriff for summoning witnesses before the grand jury. Because of the constitutional and statutory inhibition upon the sheriff collecting fees in criminal matters from the county, the sheriff cannot collect such fees if they are payable by the county. However, they may properly be included in the costs bill so that if it develops that costs are payable by others than the county or the state such fees may be collected. This conclusion is buttressed by the provisions of Section 550.280 RSMo 1949, wherein it is specifically provided that fees due witnesses before the grand jury are deemed to be criminal costs, and

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we likewise conclude that the fees due the sheriff for summoning such witnesses would constitute criminal costs.

As to the third question, it would appear that where the sheriff or his deputy is in charge of the grand jury and thereby might be considered as in attendance on the circuit court, so far as to entitle him to his statutory \$3.00 fee therefor, we believe that this would constitute a criminal matter and that the sheriff cannot charge and collect from the county for such fees.

As to question number four, you submit a hypothetical case where a defendant is charged with a crime and that the proceedings in such case are transferred to the juvenile court because of the age of the defendant. It would appear that any fees accruing to the sheriff before such matter was transferred to the juvenile court would constitute fees in a criminal matter, which could not be collected by the sheriff from the county. It appears that after the matter is transferred to the juvenile court that the proceedings are then considered as civil rather than criminal under the holding of the Supreme Court in the case of State v. Heath, 181 SW2d 517, 352 Mo. 1147. Fees accruing in the juvenile court would constitute civil rather than criminal fees and, therefore, the sheriff may collect therefor from the county since the above constitutional and statutory provisions allow the sheriff to collect and retain civil fees. In this connection it should be noted that the juvenile law pertaining to third and fourth class counties provides in Section 211.380: "The cost of the proceedings may in the discretion of the court be adjudged against the petitioner, or any person or persons summoned or appearing, as the case may be, and collected, as provided by law. All costs not so collected shall be paid by the county." Thus, if under this provision the costs are assessed against and collected from one other than the county your problem would not arise, but if they are collected from the county then it is the opinion of this office that no fees accruing to the sheriff before the cause is transferred to the juvenile court may be by him collected from the county.

As to your question number five, it would appear that where the sheriff is in attendance upon the circuit court, and that court handles both civil and criminal matters, that the fee accruing to the sheriff for such attendance could not be said to be absolutely a criminal fee, and since there appears no authority for the pro-ration of such fees it would be the conclusion of this office that such fees should be considered civil, since if the sheriff attended upon the court for one day and, during that day, the court only handled the civil matters which we are assuming, the sheriff would be entitled to his \$3.00 fee from the county. It is not believed that

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the fact that if, in addition to the civil business which the court handles and which would entitle the sheriff to a fee, the court also handled some matter of criminal business that such circumstances would or should deprive the sheriff of the fees to which he became entitled by reason of attending upon the court when it handled civil business.

CONCLUSION.

It is, therefore, the conclusion of this office that the sheriff may not, under the provisions of Article VI, Section 13, of the Missouri Constitution, and Section 57.410 RSMo 1949, collect fees for the performance of his duties in connection with criminal business from the county.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Fred L. Howard.

Yours very truly,

John M. Dalton  
Attorney General

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