

COUNTY OFFICERS:
SHERIFFS:
MILEAGE:
FEES AND SALARIES:

Sheriffs are not entitled to a mileage allowance under Section 57.430, RSMo when assisting a sheriff of another county in a criminal investigation with which the first sheriff's county is not concerned.

December 28, 1961



Honorable Vance R. Frick
Prosecuting Attorney
Adair County
Kirksville, Missouri

Dear Mr. Frick:

We are in receipt of your request for an opinion of this office which reads as follows:

"Today I was contacted by all three members of the Adair County Court concerning doubt in their minds as to the paying of certain mileage to the Adair County Sheriff. This being a third class county, the provision for sheriff's mileage is contained in Section 57.430 M.R.S. 1959.

The members of my county court have asked me to determine whether under the above sighted section the sheriff of this county is entitled to mileage for assisting the sheriff of another county in the apprehension of an escaped criminal in the other county or in looking for a subject who has committed a crime in another county when there are no charges filed against the individual in Adair County and he is not sought by the authorities of Adair County for Adair County.

I would appreciate your opinion with, if permissible, a copy of the same to the Adair County Court on the above question.

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I find no case law directly in point on this subject and feel that in your rendering of opinions you are probably in a better position to give an opinion on the same than myself."

Section 57.430, RSMo 1961, states in part as follows:

"1. 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 ten cents per mile and actual expenses not to exceed ten cents per mile for each mile traveled, the maximum amount allowable to be one hundred dollars during any one calendar month in 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."

Does the underlined portion of the above quoted section entitle sheriffs to receive a mileage allowance from his county for aid he renders to a sheriff of another county, in regard to a criminal investigation with which his county is in no way concerned?

While the language above underlined, "in connection with the investigation of persons accused. . . of a criminal offense" is susceptible of a very broad construction yet the preceding qualifying words "official duties" greatly limit the language authorizing mileage pay for sheriffs. In order for a sheriff to be entitled to mileage under the circumstances outlined in your request, those circumstances must constitute the performance of his official duties. Hence a determination must be made of the meaning of official duties

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in connection with the investigation of persons accused of or convicted of a criminal offense. We are of the opinion that services performed by a sheriff in order to be of an official nature must pertain to the county in which he holds office.

In the case of State v. Owens (Mo. Sup. 1953) 258 S.W.2d 662, the Supreme Court of Missouri discussed the extent of the powers and duties of county sheriffs. Owen, a deputy sheriff in Taney County, had been convicted in Boone County of a violation of Section 564.610 of the Missouri Statutes. This Section made it unlawful to exhibit a deadly weapon in a rude, angry and threatening manner. It exempted from its provisions, however, sheriffs, deputy sheriffs and other specified people. The Court held that the exemption applied only when a sheriff or deputy sheriff was involved in the discharge of his official duties. In this connection the Court stated at 258 S.W. 2d 665:

"[2-4] The powers, authority and duties of sheriffs, and of emergency deputy sheriffs such as defendant, are limited primarily to the county of the sheriff's election, the county for which the deputy sheriff is commissioned * * * When in another county upon official business, which originates in the county of his election or appointment, a sheriff or his deputy clearly is entitled to the immunity of Section 564.610."

A similar statement may be found in Volume 80, C. J. S., Sheriffs and Constables, Section 36, page 205:

"As a general rule, however, [a sheriff's] authority, and the authority of a deputy sheriff appointed by him, are limited to his county."

Because of these authorities we have reached the above stated opinion that actions of a county sheriff, in order to constitute the performance of his "official duties" must relate in some way to the county in which he holds office. Since in the situation contained in your request the sheriff would be performing a function in no way related to his county, he would not be entitled to mileage under Section 57.430 RSMo 1961.

CONCLUSION

It is the opinion of this office that sheriffs are not entitled to a mileage allowance under Section 57.430 RSMo 1961, when

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assisting a sheriff of another county in a criminal investigation with which the first sheriff's county is not concerned.

The foregoing opinion, which I hereby approve, was prepared by my assistant Ben Ely, Jr.

Yours very truly,

THOMAS F. BACLETON
Attorney General

EE:ms:ca