

Opinion No. 140 answered  
by letter (Nessenfeld)

No. 7 (1963)

January 4, 1963



Honorable Charles D. Trigg  
Comptroller and Budget Director  
State Capitol Building  
Jefferson City, Missouri

Dear Mr. Trigg:

You have made inquiry concerning the amount payable to jurors. Enclosed is copy of opinion dated January 4, 1963, to Hon. Norman Anderson, which rules the question of the liability of the State with respect to jury fees and the amounts payable. Our conclusions in this opinion are as follows:

- 1) The State is not liable for any jury fees in criminal cases except only such jury fees as are taxable as costs pursuant to express statutory authorization in those cases in which the State is liable for costs.
- 2) Members of the regular panel of jurors receive six dollars per day for each day of service, and mileage, payable out of the county treasury. No part of such compensation may be taxed as part of the costs.
- 3) Jurors not on the regular panel who serve in a particular case receive six dollars per day for each day of service as jurors, and mileage, also payable out of the county treasury. No part of such compensation may be taxed as part of the costs.
- 4) Jurors who are summoned in any of the cases described in Section 494.120, but

who do not serve in the trial of such cases, receive six dollars per day for each day they are in attendance on the court, and also receive mileage if they have traveled at least one mile in obedience to the summons, payable out of the county treasury. No part of such compensation may be taxed as costs.

5) Jurors, not members of the regular panel, who are summoned in all cases other than those described in Section 494.120 but do not serve in the trial of the cases, receive fees in the sum of three dollars per day for each day of attendance. The fees allowed to such jurors are to be taxed as part of the costs in the cases in which such jurors were summoned.

You will note that in the only situations in which jury fees may be taxed as costs and for which the State could be liable (those fees coming within the provisions of Section 494.170 RSMo 1959), we have not included mileage. In our opinion, Section 494.170 may not be construed to allow mileage to jurors who are summoned and attend court but who do not serve in the trial.

In State v. Williams, 92 Mo.App. 443, the Court construed the predecessor of Section 494.170 which at that time, in the situations where it was applicable, allowed a per diem for each juror attending a trial. The Court held that unless the juror actually attended a trial, there was no warrant in law for taxing his fees as costs. In 1911 this statute, insofar as it pertained to the per diem, was amended so that such jury fees are payable if the juror is summoned and attends court. However, the provision in such statute which relates to mileage has remained unchanged except with respect to the amount allowed. That statute still permits mileage only for each mile traveled "in attending any trial." Inasmuch as such jurors do not attend a trial, but simply attend court, it would follow, under the ruling in the Williams case, that mileage may not be allowed or taxed as costs. We note that Section 494.120 RSMo 1959, which is the only other section allowing compensation (in certain situations) to jurors not on the regular panel who attend court

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but do not serve in the trial, mileage is expressly allowed (but only if the juror has traveled at least one mile) for attending court.

Prior opinions of this office, inconsistent with the conclusions herein set forth, have been withdrawn and should no longer be followed.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

JN:sr

Enclosure