

CRIMINAL COSTS:
MILEAGE:
SHERIFF:
COUNTIES:
EXTRADITION:

Sheriff's mileage incurred in returning an escaped felon from without the state is not taxable as criminal costs to be paid by the state.

Opinion No. 412 (1965)
53 (1966)
Answered by Letter
(Peterson)

April 20, 1966

Honorable Roderick R. Ashby
Prosecuting Attorney
Mississippi County
Charleston, Missouri



Dear Mr. Ashby:

Recently you requested an opinion by letter, in which you stated:

"I respectfully request your opinion on the following proposition: 'Is the State liable for the costs of the sheriff in apprehending a criminal defendant charged with breaking jail while under conviction of a felony, Section 557.380, R.S. Mo. 1959'."

Subsequently, several discussions by telephone revealed the following facts; the subject felon was under conviction for arson, sentenced to the penitentiary and escaped the night before he was to be delivered to the prison authorities. Sometime after the escape, the subject felon was recaptured in Wisconsin, whereupon he refused to waive extradition. Extradition was applied for, however, the prisoner changed his mind and waived extradition. The sheriff of Mississippi County, Missouri, proceeded to Madison, Wisconsin, took the prisoner into custody, and returned him to Mississippi County where he stood trial for jail breaking. The prisoner was convicted and sentenced. Subject defendant was certified to be indigent in the breaking jail proceeding.

We enclose herewith a copy of Attorney General's Opinion to Herbert S. Brown dated February 11, 1947, and a copy of Attorney General's Opinion to Hugh M. Atwell dated February 16, 1948, which we believe answers your question.

Honorable Roderick R. Ashby

We have reexamined the cases, and the statutes, including Sections 57.290, 57.300 and 57.430, as well as Chapter 548, RSMo 1959, and we are unable to find any reason to change the former opinions. We find no statute which authorizes the sheriff to be paid a mileage fee for the trip to Wisconsin under the facts nor any authority for the State to pay the same as costs.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

WAP/jlf

Enc.--2--Op., Herbert S. Brown, 2/11/47

Op., Hugh M. Atwell, 2/16/48