

CRIMINAL LAW:
DEPARTMENT OF CORRECTIONS:
SUPREME COURT RULES:
PRISONERS:
SHERIFFS:

It is the duty of the penitentiary officials to transport a prisoner in their legal custody to and from a hearing in Circuit Court ordered under Supreme Court Rule 27.26. There is no authority for a county

to pay a sheriff mileage for transporting the prisoners in this situation.

OPINION NO. 155-68

August 22, 1968



Honorable Haskell Holman
State Auditor
State Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Holman:

This is in response to your opinion request dated 10 January 1968, as follows:

"I am enclosing copy of a letter from Judge William H. Billings and I will appreciate your advising me if the rulings as contained in opinions #15-56, dated March 23, 1956 (sic) and #2-57, dated June 12, 1957, issued to Honorable James D. Carter and Honorable Sam Appleby, respectively are applicable to question #1 of the enclosed letter and that the sheriff would not be entitled to mileage and expense for this service."

The enclosed letter you refer to reads in part as follows:

"Inmates of the Missouri Penitentiary who were sentenced by this court are filing Motions to Vacate their sentences under Supreme Court Rule 27.26. This often necessitates a hearing here in Kennett and when this happens, the inmate has to be brought from Jefferson City to Kennett pursuant to an order of this court. The warden has specifically asked that I frame my order so that he will deliver the prisoner to our sheriff at the main gate at the penitentiary and our sheriff will then bring

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the prisoner to Kennett for the hearing and thereafter return him to Jefferson City.

"My question concerning the foregoing is as follows:

"Will the sheriff be allowed to charge Dunklin County for his mileage and expense in bringing the prisoner to the hearing and returning him to Jefferson City?"

Opinion 15-56 is not applicable to your inquiry as it refers to detainers and prisoner transportation, not Supreme Court Rule 27.26 hearings.

However, attached hereto is an official opinion rendered 19 November 1954, to G. Derk Green, Twelfth Judicial Circuit Judge, which holds that under the provisions of Section 476.470, RSMo 1959, all courts have an inherent right to issue writs necessary in the exercise of their jurisdiction.

Therefore, it is obvious that no matter what the writ be titled, a circuit judge may issue a writ requiring that the prisoner be produced for hearing.

Thus, it is our view that the proper order of the circuit judge in this case is to issue a writ to the Department of Corrections which Department holds the prisoner in custody, instructing the Department of Corrections to deliver the prisoner to the circuit courthouse for a hearing under Rule 27.26 and to return such prisoner at the conclusion of the hearing.

We find no authority for the circuit judge or the penitentiary officials to require the sheriff to transport the prisoner from the penitentiary and back to the penitentiary or to authorize payment to the sheriff if he does transport such prisoner without authority of law.

It is the duty of the penitentiary officials to comply with the writ and see that the prisoner is taken to the hearing and return him to the penitentiary at its conclusion. This principle is set out in the Opinion No. 2 of 1957 referred to above where it is held that a writ for the production of prisoners who are to be witnesses is directed to the authorities having custody of the prisoner and that it is their duty to produce him at the proper place in response thereto.

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CONCLUSION

It is the duty of the penitentiary officials to transport a prisoner in their legal custody to and from a hearing in Circuit Court ordered under Supreme Court Rule 27.26. There is no authority for a county to pay a sheriff mileage for transporting the prisoners in this situation.

The foregoing opinion, which I hereby approve, was prepared by my assistant Howard L. McFadden.

Yours very truly,



NORMAN H. ANDERSON
Attorney General

Enclosure: Opinion to Green
Dated 11/19/54