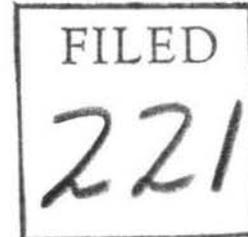


May 9, 1968



Honorable Bernard W. Gorman  
Prosecuting Attorney  
Atchison County Courthouse  
Rock Port, Missouri 64482

Dear Mr. Gorman:

This office is in receipt of your request for a legal opinion as to the amount a sheriff of a third class county is to be paid for transporting prisoners to the State Penitentiary.

Section 57.290, RSMo 1959, provides certain fees shall be allowed sheriffs and other officers in criminal cases. Said section is applicable to sheriffs of third class counties and reads in part as follows:

"3. For the services of taking convicts to the penitentiary, the sheriff, county marshall or other officers shall receive \* \* \* seven cents per mile for the distance necessarily travelled in going to and returning from the penitentiary, the time and distance to be estimated by the most usually travelled route from the place of departure to the penitentiary; the sum of seven cents per mile travelled, while being taken to the penitentiary, shall be allowed the sheriff to cover all expenses of each convict while being taken to the penitentiary \* \* \*"

Section 57.410, RSMo 1959, requires a sheriff of a third or fourth class county, for and on behalf of the county to charge and collect every fee accruing to his office arising out of his duties in connection with the investigation, arrest,

Honorable Bernard W. Gorman  
Page 2

prosecution, commitment and transportation of persons accused of or convicted of criminal offenses, except criminal fees chargeable to the county. The sheriff may retain all fees collected by him in civil matters. Mileage charges authorized by Section 57.290 supra, are criminal fees and when collected by the sheriff, must be paid over to the county treasurer.

In an opinion of this office written for Honorable Emory L. Melton, Prosecuting Attorney of Barry County, on February 28, 1947, it was concluded the sheriff and his deputy (if the court appoints a deputy) are entitled to their actual travel expense not to exceed five cents per mile for taking prisoners to the penitentiary. Section 13547.305, Laws of 1945, was cited as authority for such mileage. Said section is basically the same as Section 57.430, RSMo Cum. Supp. 1967, except that in the latter section the rate of mileage has been increased to not exceeding ten cents per mile. Section 57.430, RSMo Cum. Supp. 1967, reads in part as follows:

"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 travelled 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 travelled, the maximum amount allowable to be two 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\* \* \*"

In the above mentioned opinion of this office, (copy enclosed) it was pointed out that it was believed the taking of a prisoner to the penitentiary would come under the provision (of Section 13547.305, Laws of 1945) for serving other criminal process, for at the time a prisoner is delivered to the penitentiary by the sheriff a commitment is served upon the warden, and a commitment is a criminal process issued by the trial court. In that event, the sheriff or his deputies would be entitled to the actual expense of not to exceed five cents per mile, which mileage is to cover all expenses of the trip.

For the same reasons given in the opinion mentioned above, it is believed that a commitment which the sheriff of a third class county has, and must serve upon the warden of the State Penitentiary, when the sheriff delivers one or more convicts to the penitentiary, is a criminal process within the meaning of Section 57.430 Supra, and the county court of such a third class

Honorable Bernard W. Gorman  
Page 3

county shall allow the sheriff actual and necessary expense for each mile of his trip in taking one or more convicts to the penitentiary, and in serving the commitment for them, at not to exceed ten cents per mile travelled by the sheriff.

Therefore, it is our view that under provisions of Section 57.430 RSMo Cum. Supp. 1967, the county court shall allow the sheriff of a third class county actual and necessary expenses for each mile travelled in taking convicts to the penitentiary at a rate of not to exceed ten cents per mile.

Yours very truly,

NORMAN H. ANDERSON  
Attorney General

PNC:vt

Enc. Opinion to  
Honorable Emory L. Melton