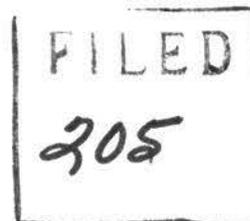


June 5, 1974

OPINION LETTER NO. 205
Answer by Letter - Klaffenbach

Honorable James Millan
Prosecuting Attorney
Pike County, Courthouse
Bowling Green, Missouri 63334



Dear Mr. Millan:

This letter is in response to your question asking:

"Is the Sheriff of Pike County Missouri, which is a third class county entitled to mileage in criminal cases as described in section 57.300 in addition to that mileage that he is entitled to under section 57.430 which also provides for mileage for criminal process, but provides for a maximum of \$200.00 in any one calendar month? In other words, can he receive the \$200.00 under section 57.430 and additional mileage under 57.300 so long as the mileage is not duplicative?"

Section 57.300, RSMo, provides:

"Sheriffs, county marshals or other officers shall be allowed for their services in criminal cases and in all proceedings for contempt or attachment as follows: Fifteen cents for each mile actually traveled in serving any venire summons, writ, subpoena or other order of court when served more than five miles from the place where the court is held; provided, that such mileage

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shall not be charged for more than one witness subpoenaed or venire summons or other writ served in the same cause on the same trip."

Section 57.430, RSMo, provides:

"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 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. 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.

"2. At the end of each month, the sheriff and each deputy shall file with the county court an accurate and itemized statement, in writing, showing in detail the miles traveled by such officer, the date of each trip, the nature of the business engaged in during each trip, and the places to and from which he has traveled. Such statement shall be signed by the officer making claim for reimbursement, verified by his affidavit, and filed by him with the county court. Whenever claim for reimbursement is made by a deputy, his statement shall also be approved in writing by the

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sheriff. The county court shall examine every claim filed for reimbursement, and if found correct, the county shall pay to the officer entitled thereto, the amount found due as mileage."

As we view it the difference in these sections is clear. Section 57.300, RSMo, is not a mileage reimbursement statute, it is a fee statute and such fees are to be charged by the sheriff as are other fees and under Section 57.410, RSMo, are to paid to the county.

On the other hand, Section 57.430, RSMo, provides for allowances payable to the sheriff by the county, in addition to salary, and such allowances are divided into two separate categories. The first category is unlimited in total amount for "actual and necessary expenses for each mile traveled in serving warrants or any other criminal process not to exceed ten cents per mile." The second category is "actual expenses not to exceed ten cents per mile for each mile traveled, 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 [sic] of a criminal offense." Both categories are subject to the other provisions of such section.

Very truly yours,

JOHN C. DANFORTH
Attorney General