

Sheriff:

Sheriff is entitled to ten cents a mile for execution ~~and~~ commitment where conviction had out in county in Justice Court, where the distance is more than five miles.

5-17  
August 13, 1934.



Mr. George D. Brownfield,  
Prosecuting Attorney,  
Boonville, Missouri.

Dear Sir:-

We have your letter of June 20, 1934, in which is contained a request for an opinion as follows:

"A question has been presented to me by the Circuit Clerk of this County whether or not a Sheriff, where a conviction has been had out in the county in the Justice Court, is entitled to a fee for execution and for mileage on said execution; in other words, where a commitment is issued out in some Justice of the Peace Court I take it he is entitled to \$1.00 for the commitment. Now the question is whether he is entitled to any mileage on the execution and commitment in a criminal case?

"Thanking you for handing down an opinion on this as promptly as possible as our Circuit Clerk is holding up some fee bills, as he does not know just what to do in cases of this kind, I am."

Section 11792, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 11792. Mileage of sheriffs, county marshals and other officers in certain cases.--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: Ten 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 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."

To the same effect, part of Section 11789, R. S. Missouri, 1929.

Under authority of the above quoted section we are of the opinion that the sheriff is entitled to the mileage fee of ten cents a mile in the situation referred to in your letter, provided the distance of the justice court in question from the jail exceeds five miles. The

mileage fee is therein allowed the sheriff for his "services in criminal cases" in serving any order of court where the distance one way exceeds five miles. Very clearly, we think, where the "services" of serving an order of court necessarily include not only the mere serving of the order but also the execution thereof, the sheriff should be and is entitled to his mileage fees for same. As a matter of fact, the distance traveled would be no greater whether the sheriff traveled the distance merely to serve the order or in addition to bring the prisoner back to the jail with him, as the distance both ways would in any event be counted in computing mileage.

Nor do we think that that part of the statute which provides that the order must be served more than five miles from where the court is held changes the matter. Of course, in our present situation the nominal or technical service would take place at the place where the court was held, but actually there is more to the service of an order of commitment than that. The prisoner must be taken to jail as part of the process and if the jail is more than five miles away mileage fees should be allowed for the entire procedure. The wording of the statute can, therefore, be taken to be only the setting up of five miles as the distance between points where the services by the sheriff between such points will entitle him to fees for mileage.

In this connection it may be wise to advert to Section 11791, Revised Statutes of Missouri, 1929, which provides in part as follows:

"Sec. 11791. Fees of Sheriffs, marshals and other officers.--\* \* \* \* \*. No compensation shall be allowed under this section for taking the prisoner or prisoners from one place to another in the same county, excepting in counties which have two or more courts with general criminal jurisdiction."

The above quoted provision does not, in our opinion, apply to our present situation. In the first place, when read with the rest of the section, it refers only to compensation in certain cases and not to mileage at all. In the second place, it could not refer to commitments since a fee of one dollar is provided for such in the earlier part of the same section. We, therefore, believe that Section 11792 controls and adhere, therefore, to our construction of such section as set out earlier in this opinion.

Very truly yours,

CMEJr:LC

CHARLES M. HOWELL, Jr.  
Assistant Attorney General

Approved: