

HIGHWAY PATROL: Highway patrolman is entitled to fee of \$1.00  
CONSTABLES: upon service of a warrant which must be paid  
FEES: into the state treasury. The same applies as  
to commitments. Only one officer entitled to  
fee.

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Honorable Marshall Craig  
Prosecuting Attorney  
Mississippi County  
Charleston, Missouri

Dear Sir:

We are in receipt of your request for an opinion from this department under date of July 19, 1941, which reads as follows:

"We have several Justices of the Peace that have requested information with reference to collection of \$1.00 to be turned over to the State in cases where an arrest is made by a patrolman. Of course, the patrolman would not be entitled to a fee for making the arrest. The question is whether that should be collected and paid to the State. Then in addition, if the Constable accompanies the patrolman, would he be entitled to \$1.00?"

I am presuming in the above request where you mention "patrolman" you mean a member of the State Highway Patrol.

Section 8357, R. S. Missouri 1939, reads as follows:

"The necessary expenses of the members of the patrol in the performance of their duties shall be paid by the state when such members are away from their places of residence or from the district to which they are assigned, subject to the approval of the commission. All fees for the arrest and transportation of persons arrested and witnesses' fees for mem-

bers of the patrol shall be the same as provided by law for sheriffs and shall be taxed and collected as costs and paid into the state treasury as provided by law."

Under the above section the fees for the arrest and transportation of persons by members of the patrol shall be the same as the sheriff, and it is mandatory that the fees be taxed and collected as costs and paid into the state treasury. The reason that the money should be paid into the state treasury is that the state pays the necessary expenses of the members of the State Highway Patrol. Since Section 8357, supra, sets out that the highway patrolman shall receive the same fees as for a sheriff, we are herein setting out that part of Section 13413, R. S. Missouri 1939, which applies to the fees collected by a sheriff in a criminal proceeding in reference to the arrest and commitment to jail. Section 13413, supra, partially reads as follows:

"Sheriffs, county marshals or other officers shall be allowed fees for their services in criminal cases and for all proceedings for contempt or attachment as follows:

"For serving and returning each capias, for each defendant ..... \$1.00  
\* \* \* \* \*  
"For committing any person to jail \$1.00  
\* \* \* \* \*"

Under the above section no provision is made for the payment of a fee for an arrest, the only provisions being made are the serving of a capias and for committing any person to jail.

The section applicable to the payment of criminal costs or fees allowed a constable is Section 13399, R. S. Missouri 1939, which partially reads as follows:

"Constables shall be allowed fees for their services as follows:

"\* \* \* \* \*

"For serving warrant in any criminal case, for each defendant ..... \$1.00  
 \* \* \* \* \*  
 "For taking a criminal to jail .. 1.00  
 \* \* \* \* \* "

It will be noticed that although the wording is different in the section applicable to sheriffs than as set out in the section applicable to constables, it has the same meaning. Taking a criminal to jail under the constable section is the same as committing to jail under the sheriff section.

In the case of Thomas v. County of St. Louis, 61 Mo. 547, l. c. 548, the court, in defining the term "committing any person to jail," said:

"The words 'committing any person to jail,' relate to the execution by the sheriff of an order or warrant of commitment made or issued by some officer exercising judicial functions."

Under that holding "committing to jail" is not an arrest without a warrant and placing in jail but is the placing in jail of a defendant by the sheriff on his order or warrant of commitment issued by an officer exercising judicial functions. For that reason we hold that for a mere arrest without a warrant, *capias* or other order, neither a constable, sheriff or highway patrolman is entitled to a fee for such arrest. In order that they be eligible to receive a fee for committing to jail there must first be a warrant, *capias*, or order issued and then an arrest made and the person then placed in jail, either for want of recognizance on a continuance or for placing in jail after a conviction of imprisonment.

Section 3808, R. S. Missouri 1939, prescribes the procedure of the issuing of a complaint before a justice of the peace who then issues a warrant for the arrest of the defendant.

Section 3815, R. S. Missouri 1939, provides for a continuance of the cause when the defendant is brought before the justice of the peace and gives a good reason for his con-

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tinuance. Under this section he may give a bond for his later appearance.

Under Section 3816, R. S. Missouri 1939, if he should fail or refuse to give bond, the justice shall commit him to jail until the day fixed for trial.

Under the above three sections, if a State Highway Patrolman, a sheriff or a constable should make an arrest without a warrant, then the one making the arrest, to whom the commitment should be issued, would be entitled to One Dollar for committing to jail for want of bond on a continuance.

Section 3833, R. S. Missouri 1939, provides a form of warrant of commitment which is used for committing to jail for want of payment of fine or costs after conviction. In that case the highway patrolman, sheriff or constable would then be entitled to another dollar for committing the prisoner to jail. Under the sheriff section, in case of the issuance of a capias, which is the same as a warrant, the sheriff would be entitled to One Dollar for serving the capias and making the return. All of the fees allowed for the serving of warrants, capias or serving of commitments to jail are by order of a court or officer of judicial function and no fees are allowed for an arrest without a warrant.

In your request you state that the patrolman is not entitled to a fee for making arrests. We agree that the patrolman is not entitled to a fee for making arrests without a warrant or capias, but if he has a capias or warrant at the time of the arrest, that fee is entitled to be taxed as a fee due the patrolman but must be paid into the state treasury as set out in Section 8357, supra.

You also inquire if the constable accompanies the patrolman would he be entitled to One Dollar. Under our above holding, we stated that the mere arrest without a warrant or capias is not subject to allowance of a fee as set out, either in the constable section or sheriff section allowing fees for service of a capias or warrant. The capias or warrant is directed to the sheriff or constable and a return must be made by the officer serving the capias or warrant. Therefore, the only one entitled

to the One Dollar fee for serving the warrant or capias is the one that makes the return on the warrant or capias. Only one person can make a return and the one making the return is the one that is entitled to the fee as set out in the cost section.

A State Highway Patrolman may make an arrest if the warrant is directed to him. The duties of a State Highway Patrolman are set out in the case of State v. McKeever, 101 S. W. (2d) 1. c. 31, where the court said:

"\* \* \* Among the duties of the state highway patrol is the policing, etc., of the state highways. Laws 1931, p. 234, section 12 (Mo. St. Ann. 8203l, p. 6974). They are 'declared to be officers of the state of Missouri and shall be so deemed and taken in all courts having jurisdiction of offenses against the laws of this state,' and are vested with the powers conferred by law on peace officers ('sheriffs, police officers and other peace officers of this state,'--Laws 1931, p. 231, section 2 (Mo. St. Ann. section 8203b, p. 6970), except they may not serve or execute civil process, Laws 1931, p. 234, section 13 (Mo. St. Ann. section 8203m, p. 6975)), and are restricted in the right or power of search and seizure to the taking of deadly and dangerous weapons from persons under or about to be arrested (Id., p. 235, section 16 (Mo. St. Ann. section 8203p, p. 6976)). They have authority to arrest any person detected in the act of violating any law of the state (section 13, supra (Mo. St. Ann. section 8203m, p. 6975)) and their powers and duties are supplementary to, and not a limitation on, the powers and duties of sheriffs, police officers, or other peace officers of the state (Laws 1931, p. 231, section 1 (Mo. St. Ann.

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section 8203a, p. 6970)). \* \* \* "

CONCLUSION

In view of the above authorities it is the opinion of this department that the fee for the arrest of a person under a warrant or capias served by a State Highway Patrolman must be taxed as costs and paid into the state treasury.

It is further the opinion of this department that if a constable accompanies a State Highway Patrolman in serving a warrant or capias, he is not entitled to One Dollar for the service of a capias or warrant, if the State Highway Patrolman makes the return on the capias, or warrant. The One Dollar for making the arrest should be taxed in favor of the State Highway Patrolman and paid into the state treasury.

It is further the opinion of this department that where an arrest is made without a warrant and the defendant is taken before a justice of the peace forthwith as provided by law and a continuance is granted and the defendant, not being able to furnish bond for appearance at the time set for trial and a commitment is issued committing him to jail, the officer serving the commitment is entitled to One Dollar as a fee. If the officer happens to be a State Highway Patrolman, it must be taxed as costs and paid into the state treasury. If the constable served the commitment, he is entitled to the One Dollar as allowed by statute for taking to jail.

After conviction and a judgment of imprisonment or imprisonment for nonpayment of the fine and costs where a commitment is issued committing the defendant to jail, the officer serving the commitment is entitled to another dollar as a fee, and the same rule applies to the State Highway Patrolman as to the payment of the fee into the state treasury.

Respectfully submitted

APPROVED:

W. J. BURKE  
Assistant Attorney General

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VANE C. THURLO  
(Acting) Attorney General

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