CRIMINAL COSTS:
SHERIFF's MILEAGE:
SCHOOLS:
ENLARGED DISTRICTS:
ELECTION OF DIRECTORS:
PRINTED BALLOTS REQUIRED:

1. When sheriff serves criminal warrant while driving on official business not connected with case, and claims mileage under provisions of § 57.300, RSMo 1949; if warrant served more than five miles from place of trial, he is entitled to mileage at ten cents per mile for each mile actually traveled, under said section. 2 (a). Examination and certification of criminal fee bills under provisions of § 550.190, RSMo 1949, a discretionary duty of circuit judge. He is required to examine and certify the sheriff's mileage when court costs are paid by the state. No statutory duty of judge to examine and certify mileage of sheriff of third and fourth class counties when criminal costs to be paid by county and sheriff's mileage exempt under provisions of §57.410, RSMo 1949.
2(b). Examination and certification of criminal fee bills of cases finally determined in magistrate court, a discretionary duty of magistrate. No statutory duty of magistrate to examine and certify mileage of sheriff of third or fourth class county when criminal costs to be paid by county and sheriff's mileage exempt under provisions of § 57.410, RSMo 1949.
3. In election of directors of enlarged school district, printed ballots are necessary to valid election under provisions of § 165.687, 111.400, RSMo 1949, and 165.330, RSMo Cum. Supp. 1955.

June 17, 1957

Honorable J. Allen Gibson
Prosecuting Attorney
Stone County
Galena, Missouri

Dear Mr. Gibson:

This department is in receipt of your recent request for a legal opinion which reads as follows:

> "Will you please give me an opinion on the following questions.
>
> "(1) Should the Magistrate allow the Sheriff $2.00 for the warrant and plea where the defendant has been summoned in by the Highway Patrol or the Game Warden?
>
> "(2) Should the Sheriff's office be allowed mileage where they summons a man in when they have not gone on a special call but issued the summons while cruising the highways?
>
> "(3) Is the allowing or disallowing of mileage and the amount thereof discretionary with the Judge?
>
> "(4) In the elections of school boards for reorganized school districts and members of special road districts boards should there be printed ballots? If there is not is the election valid?"

The first part of the first inquiry refers to an instance when a defendant is arrested on a criminal warrant by a member of the State Highway patrol, and asks if the magistrate should allow the sheriff $2.00 for the warrant and plea.

Honorable J. Allen Gibson

An opinion of this department rendered to Honorable Cline C. Herren, Judge and ex-officio Magistrate of Webster County on August 13, 1947, concluded that sheriffs are not entitled to fees for arrests made by the State Highway Patrol, but may collect a fee for trial, or confession and must turn same into general revenue. A copy of said opinion is enclosed as it is believed to fully answer the first part of the first inquiry.

The Second part of the first inquiry asks if the magistrate should allow the sheriff $2.00 for the warrant and plea when the defendant was arrested by a Game warden.

In an opinion of this department rendered to Honorable H. A. Kelso, Judge of the Magistrate Court of Vernon County, on October 24, 1950, it was concluded that the sheriff is entitled to a fee of $1.00 upon arrest by a conservation agent for a violation of the Wildlife Code. A copy of said opinion is enclosed, as it is believed to fully answer the second part of the first inquiry.

In the first inquiry the word "summoned" is used in referring to the arrest of a defendant by the officers, on a warrant issued by a magistrate court. The second inquiry refers to mileage of the sheriff's office "where they summons a man in when they have not gone on a special call but issued the summons while cruising the highways." The meaning intended to be given this statement is not clear to us.

In view of the use of the word "summoned" as used in the first inquiry, it is assumed the writer intended to use the word "summons" in the second inquiry in the same sense and to refer to a factual situation in which the sheriff or his deputy or deputies arrest a person on a criminal warrant issued by a magistrate court and when the officers arrested the defendant under authority of the warrant "while cruising the highways." The meaning of the words "while cruising the highways" is not indicated and we are at a loss to understand the exact meaning intended to be given such words, since no Missouri statutes define such terms or impose a duty of this nature upon the sheriff or his deputies. For the purpose of our discussion we will assume said terms were meant to refer to a situation in which the sheriff and/or his deputies are traveling on the public highways on some kind of official business at the time they were given a warrant for the arrest of the defendant, and that whatever such official business was, it had no connection with the case pending in magistrate court in which the warrant was issued. Your letter of May 28, 1957, in attempting to clarify the second inquiry, states that the mileage referred to in the question is that of the sheriff authorized by

Section 57.300, RSMo 1949, and the answer to the second question will be answered on this basis.

Section 57.300, RSMo 1949, fixes the mileage sheriffs or other officers are entitled to receive for serving process in criminal cases. Said Section reads as follows:

> "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."

While the section does not specifically mention or refer to the fees for serving warrants in criminal cases, it is believed the legislative intent was that officers should receive mileage for serving criminal warrants at the rates specified therein.

The section does provide that the officer shall be entitled to a fee of ten cents per mile for each mile actually traveled in serving a writ in a criminal case when served more than five miles from the place where the court is held. Of course, if the officer had different kinds of writs or more than one writ of the same kind to serve in the same case, then he could not be allowed mileage from the place of trial on each writ, but could be allowed mileage only for one trip to serve all such writs in the same case.

Therefore, our answer to the second inquiry is in the affirmative.

The third inquiry of the opinion request asks "Is the allowing or disallowing of mileage and the amount thereof discretionary with the Judge?"

It is assumed the mileage referred to in the third inquiry is the same mileage of the sheriff mentioned in the second inquiry.

Section 550.140, RSMo 1949, imposes a duty on the clerk of the court in which any criminal case has been determined or continued generally to prepare a fee bill, and if the state or county is liable for the cost, to deliver the fee bill to the prosecuting attorney. Said section reads:

> "The clerk of the court in which any criminal cause shall have been determined or continued generally shall, immediately after the adjournment of the court and before the next succeeding term, tax all costs which have accrued in the case; and if the state or county shall be liable under the provisions of this chapter for such costs or any part thereof, he shall make out and deliver forthwith to the prosecuting attorney of said county a complete fee bill, specifying each item of services and the fee therefor."

Section 550.240, RSMo Cum. Supp. 1955, provides what procedure shall be followed when a criminal case has been finally determined in magistrate court, and in preparing a fee bill of the costs, or a criminal case has been finally determined and the case, together with a fee bill and all papers are certified to the circuit court. Said section reads as follows:

> "In all criminal cases which have been finally determined in magistrate court in which the county shall be liable for any costs incurred therein, the clerk of said court shall certify a complete itemized fee bill thereof to the county court for payment, which fee bill shall be examined and audited by the prosecuting attorney and the magistrate judge. Whenever the state shall be liable under any law for costs incurred in any examination of a felony before any magistrate, or in any misdemeanor case which is not finally determined in the magistrate court, the magistrate clerk shall make out, certify and return to the clerk of the circuit court of the county a complete fee bill, specifying each item of service and the fee therefor, together with all the paper and docket entries in the case. The clerk of the circuit court shall thereupon make out a fee bill of all such costs which are legally chargeable against the state or county, which shall be examined by the prosecuting attorney. All such fee bills shall thereafter be proceeded with in all respects as in the case of fee bills for costs incurred in the circuit court."

This section applies when (1) a criminal case has been finally determined in magistrate court and the county is

liable for the court costs; (2) when the state shall be liable for the court costs incurred in any felony examination, or a misdemeanor case is not finally determined in magistrate court. In either instance an itemized fee bill of all court costs shall be prepared by the clerk of the magistrate court.

In the first class of cases the complete itemized fee bill shall be certified to the county court for payment after it has been examined and audited by the prosecuting attorney and magistrate judge.

In the second class of cases the magistrate clerk shall prepare a complete itemized fee bill which shall be certified to the clerk of the circuit court of the county, together with all papers and docket entries in the case. Thereafter, the circuit clerk shall prepare a fee bill of all costs in the case for which the state or county is legally chargeable. All such fee bills shall then be proceeded with as in the case of fee bills for costs incurred in circuit court.

Section 550.190, RSMo 1949, provides for the examination and certification of fee bills in criminal cases in circuit court and reads:

> "The prosecuting attorney shall strictly examine each bill of costs which shall be delivered to him, as provided in Section 550.140, for allowance against the state or county, and shall ascertain as far as possible whether the services have been rendered for which the charges are made, and whether the fees charged are expressly given by law for such services, or whether greater charges are made than the law authorizes. If the fee bill has been made out according to law, or if not after correcting all errors therein, he shall report the same to the judge of the court, either in term or in vacation, and if the same appears to be formal and correct, the judge and prosecuting attorney shall certify to the state comptroller, or clerk of the county court, accordingly as the state or county is liable, the amount of costs due by the state or county on the fee bill, and deliver the same to the clerk who made it out, to be collected without delay, and paid over to those entitled to the fees allowed."

While Section 550.190, supra, requires the prosecuting attorney and circuit judge to examine the fee bill and determine, as far as possible, if the services rendered and charged for therein are authorized by the statutes, and if the fee bill has been made out according to law. All errors must be

corrected and the fee bill appear to be correct and formal before the prosecuting attorney and circuit judge sign and certify it to the state comptroller or to the county for payment, as the case may be.

With reference to the sheriff's mileage in those cases when the costs shall be paid by the state, it is the duty of the circuit judge to strictly examine and certify such criminal costs to the state comptroller for payment in the manner discussed in the preceding paragraph. However, in those criminal cases in which the costs shall be paid by the county, a different procedure is to be followed with reference to the sheriff's mileage.

The provisions of Section 57.410, RSMo 1949, require the sheriff of a third or fourth class county to charge and collect every fee accruing to his office, except those criminal fees chargeable to the county. This section has particular significance in the present inquiry since your county of Stone is one of the fourth class and said section must be considered in arriving at the correct answer to the third inquiry.

The section reads as follows:

> "In all counties of the third and fourth classes, the sheriff shall charge and collect for and on behalf of the county every fee accruing to his office which arises out of his duties in connection with the investigation, arrest, prosecution, care, commitment and transportation of persons accused of or convicted of a criminal offense, except such criminal fees as are chargeable to the county. The sheriff may retain all fees collected by him in civil matters."

From this section it appears that the sheriff of a third or fourth class county is not required to charge for mileage or other fees in criminal cases when the county shall pay the costs. It is believed the sheriff's mileage shown in the fee bill, along with other court costs of the sheriff, that Section 550.190, supra, nor any other section of the statutes impose the duty upon the circuit judge to examine and certify such mileage or other fees of the sheriff to the county court for payment.

Section 550.240, supra, requires a fee bill to be made, which shall be examined and certified to by the prosecuting attorney and magistrate judge in all criminal cases finally determined in magistrate court, when the county shall pay the court costs.

For the same reasons given above, it is believed that all criminal cases finally determined in magistrate court, and also in view of the provisions of Section 57. 410, supra, the magistrate judge is not required to examine and certify to the sheriff's mileage or other fees, i.e., those of a sheriff of a third or fourth class county, to the county court for payment.

The third inquiry also involves the proposition as to whether or not the duty of the circuit or magistrate judge in examining and certifying fee bills of criminal cases for payment is discretionary or ministerial.

In the case of State ex rel, Houser v. Oliver 116 Mo. at l.c. 188 it was held that a criminal court judge, in certifying criminal cost fee bills to the state auditor for payment was not performing a ministerial, but a discretionary duty, and mandamus was not a proper remedy to control his actions in such matter. At l.c. 194 the court said:

> "The matter in issue was one of fact, whether it were true, as stated in the return, that defendant allowed in the fee bill certified to the state auditor, 'fees for at least three witnesses to establish any one fact in said cause,' If the determination of that question called for the exercise of discretionary powers and judgment, then the action of defendant cannot be controlled by mandamus. Unless such powers were intended to be conferred upon the judge of the criminal court, it is difficult to see any good reason why the supervision of the fee bill made out by the clerk should have been given to and so positively enjoined upon the judge and prosecuting attorney. The mere ministerial act of calculating the amount of the mileage and per diem of a witness at rates fixed by the statute could have been done as well by the clerk. That is not all that is required by this statute. There must be a determination of what issues of fact were involved in the trial and the number of witnesses necessary, not exceeding three, to each fact to properly present those issues to the jury. The statute does not mean that

> the number of independent facts must be ascertained and three witnesses allowed to each fact, though one or more witnesses might testify to a number of them. * * * To avoid the allowance of fees for fifteen witnesses, when three were all that should have been paid by the state, was the purpose and intent of the statute. If no discretion was allowed these auditing officers, the statute would be wholly nugatory."

In view of the foregoing, and in answer to the third inquiry, it is our thought that in examining and certifying fee bills under the provisions of Section 550.190, supra, the circuit judge may exercise discretion and approve all costs found due the claimant which are in accordance with the applicable statutes. The judge should disapprove all other costs shown in the fee bill. In those criminal cases in which the state shall pay the costs, he shall strictly examine the fee bill and determine, insofar as possible, if the services rendered and charged for, including the sheriff's mileage, are authorized by the statutes, and if the fee bill has been made out according to law. All errors appearing therein must be corrected before he signs and certifies it to the state for payment. It is further believed that under the provisions of Section 57.410, supra, the circuit judge is not required to examine and certify the mileage of a sheriff of a third or fourth class county in a criminal fee bill in those instances when the county shall pay the court costs.

In criminal cases finally determined in magistrate court under the provisions of Section 550.240, supra, and also Section 57.410, supra, when the court costs shall be paid by the county the magistrate is not required to examine and certify the sheriff's mileage to the county court for payment.

The fourth inquiry of the opinion request reads:

> "(4) In the elections of school boards for reorganized school districts and members of special road districts boards should there be printed ballots? If there is not is the election valid?"

While this inquiry does not so state, it is assumed to refer to the election of directors of an enlarged school

district under statutory provisions relating to the reorganization of school districts.

Section 165.687, RSMo 1949, provides for the election of six directors in an enlarged district and reads as follows:

> "If the proposal to form such enlarged district has received a majority of the votes cast on such proposition the county board of education shall order an election in such enlarged district, at a time and place or places to be fixed by the county board of education, not more than thirty days after the date of the election when such enlarged district was formed, for the purposes of electing six directors in such enlarged district. The election shall be conducted in the manner as provided by section 165.330. Until such time as a majority of the district board members of the enlarged district are elected and qualified, the county board of education shall perform such duties with respect to conducting the election as would be performed by the district board of education were it in existence, but the costs of election shall be paid from the incidental fund of the enlarged district. Two directors shall be elected to serve until the next annual school election, two to serve until the second annual school election, and two to serve until the third annual school election. After the expiration of the initial terms, members elected shall serve for three years. The directors above provided shall be governed by the laws applicable to six-director school districts."

It is noted that said section states that the election shall be conducted in the manner provided by Section 165.330, RSMo 1949. Section 165.330 has been repealed and a new section bearing the same number in RSMo Cumulative Supplement 1955 has been enacted and reads, in part, as follows:

> "1. The qualified voters of such town, city or consolidated school district shall vote by ballot upon all questions provided by law for submission at the annual school meetings, and such election shall be held on the first Tuesday in April of each year, and at such convenient place or places within the district as

> the board may designate, beginning at seven o'clock a.m. and closing at six o'clock p.m. of said day. The board shall appoint three judges of election for each voting place, and said judges shall appoint two clerks; said judges and clerks shall be sworn and the election otherwise conducted in the same manner as the elections for state and county officers and the result thereof certified by the judges and clerks to the secretary of the board of education, who shall record the same, and, by order of said board, shall issue certificates of election to the persons entitled thereto; and the results of all other propositions submitted must be reported to the secretary of the board, and by him duly entered upon the district records.
>
> "2. All propositions submitted at said annual meeting may be voted for upon one and the same ballot, and necessary poll books shall be made out and furnished by the secretary of the board; provided, that in all cities and towns having a population exceeding two thousand and not exceeding one hundred thousand inhabitants, in counties containing not less than two hundred thousand nor more than four hundred thousand inhabitants according to the last national census, said elections may at the option of the board be held at the same time and places as the election for municipal officers and in all cities and towns having a population exceeding two thousand and not exceeding one hundred thousand inhabitants in other counties, said elections shall be held at the same time and places as the election for municipal officers, and the judges and clerks of such municipal election shall act as judges and clerks of said school election, but the ballots for said school election shall be upon separate pieces of paper and deposited in a separate ballot box kept for that purpose."

The section provides that the voters "shall vote by ballot upon all questions provided by law for submission at the annual school meetings, * * *. All propositions submitted at said annual meeting may be voted for upon one and the same ballot, * * *." The section further provides that in cities and towns having certain designated populations, the election may, at the option of the board, be held at the same time and place as the election for municipal officers with the same judges and clerks for both elections. The ballots for the

school election shall be upon separate pieces of paper and deposited in separate ballot boxes.

From the provisions of said sections, it is obvious that the election of directors of an enlarged school district and directors of a city, town or consolidated district shall be by ballot, but neither section states that the names of the candidates shall appear on a printed ballot. However, the last quoted section does state that the election shall be conducted in the same manner as elections for state and county officers.

Section 111.400, RSMo 1949, requires all ballots cast in elections for such officers within the state to be printed and distributed at public expense. In view of the provisions of this section, printed ballots shall be used in the election of directors of an enlarged school district, but neither this section nor any other sections define the term "printed ballot." In this connection we call attention to the case of State ex rel. Page et al. v. Vossbrinck et al., 257 S.W. 2d 208.

This was a mandamus proceeding brought for the purpose of challenging certification of the results of a special election for consolidating two school districts into an enlarged district. The ballots used in the election were questioned because they had been prepared upon a duplicating machine from an original typewritten form, rather than having been prepared upon a printing press. The court held that printed ballots were required in elections of this nature and the ballots in question were "printed ballots" within the meaning of the statute. At l.c. 210, the court said:

> "While Section 165.680 prescribes the form of the ballots to be used at an election on a proposed enlarged district, it contains no direction whatever as to the mechanics of their preparation. It does provide, however, that such an election shall be conducted in the same manner as elections for state and county officers; and when we turn to the statutes relating to the conduct of election, we find the requirement in Section 111.400 RSMo 1949, V.A.M.S., that 'All ballots cast in elections for public officers within this state shall be printed.' Even though it is true that Chapter 111 by its own terms excludes its application to school elections generally, Section 111.010 RSMo 1949, V.A.M.S., its application to an election upon a proposed

> enlarged district is specially authorized by the reference in Section 165.680, so that for the purposes of this case it would seem that relators are at least correct in their insistence upon the necessity for printed ballots.
>
> "But even though it was obligatory that printed ballots should have been employed, it does not follow that the ballots prepared by the duplicating process failed to satisfy such requirement. It is a well known fact that the word 'printed' has a variety of meanings depending upon the connection in which it is used. In its broadest sense the term 'printed' is used in contradistinction to something prepared in script. Having due regard for the purpose to be served, we are convinced that the Legislature, in laying down the requirement that ballots should be printed, was not primarily concerned with the precise mechanical process by which such result should be accomplished, but rather with the fact that the letters, figures, and symbols appearing on the ballots should be of the character of those that are commonly and ordinarily referred to as print. In this case there is no contention that the ballots in dispute did not fully conform in language, symbols, and arrangement with those which had been prepared and supplied by Vossbrinck. Instead the only criticism is that they had been prepared upon a duplicating machine from an initial typewritten form rather than by having been run through a printing press with the impression made upon the paper by contact with inked type. The ballots in question were 'printed' within the meaning of the statute, and there would be no basis in law for directing that they be rejected in determining the results of the election at which such ballots were cast."

From the foregoing it appears that in all elections for directors of enlarged districts held in accordance with Sections 165.687, RSMo 1949, 165.330, RSMo Cum. Supp. 1955 and 111.400, RSMo 1949, printed ballots shall be used, but the meaning of the word "printed", as used in Section 111.400, supra, does

not require the ballots to be prepared only upon a printing press. As indicated by the court in State v. Vossbrinck, supra, the ballots may be prepared by use of some other mechanical device than a printing press and they will still be printed ballots within the meaning of Section 111.400, supra.

In answer to the first part of the fourth inquiry, it is our thought that printed ballots shall be used in all elections for directors of enlarged school districts in order to render such elections valid.

The latter part of the fourth inquiry, in effect, asks if printed ballots shall be used in the election of members of the board of commissioners of a special road district, and in the event printed ballots are not used, if the election is valid.

The inquiry fails to indicate the kind of special road district or county involved, that is, it fails to state if the inquiry was intended to refer to a special eight-mile road district or a special benefit assessment district of a nontownship organization county, as referred to in Sections 233.010 to 233.165, and 233.170 to 233.315, RSMo 1949, respectively, or if the reference was to special benefit assessment districts of township organization counties organized under the provisions of Sections 233.320 to 233.470, RSMo 1949.

Inasmuch as your county of Stone is a nontownship organization county, it is assumed that the reference intended was to the election of road commissioners of a special benefit assessment district of a nontownship organization county.

In an opinion of this department written for Honorable William Lee Dodd, Prosecuting Attorney of Ripley County on January 16, 1950, it was concluded that the board of commissioners of a special road district organized under provisions of Article 11, Chapter 46, RSMo 1939, should determine the manner of taking, ascertaining and recording the vote in an election of a commissioner.

Article 11, Chapter 46, RSMo 1939, has been retained in its entirety, as Sections 233.170 to 233.315 of RSMo 1949, dealing with special benefit assessment road districts in non-township organization counties. Section 8712, RSMo 1939, quoted in the opinion, is now Section 233.180, RSMo 1949. A copy of said opinion is enclosed as it is believed to fully answer the latter part of the fourth inquiry regarding the election of commissioners of a special road district.

Honorable J. Allen Gibson

CONCLUSION

It is therefore the opinion of this department that:

1. When a sheriff serves a warrant on a defendant in a criminal case while traveling on other official business not connected with such criminal case, and if said warrant is served more than five miles from the place where the court is held, and mileage is claimed under the provisions of Section 57.300, RSMo 1949, the sheriff shall be entitled to mileage at the rate of ten cents for each mile actually traveled, as provided by said section.

2. (a) The examination and certification of fee bills of criminal cases, under the provisions of Section 550.190, RSMo 1949, is a discretionary duty of the circuit judge. He is required to certify to the sheriff's mileage in those cases, the costs of which shall be paid by the State of Missouri. There is no statutory duty upon the judge to examine and certify to the mileage of a sheriff of a third or fourth class county in those criminal cases in which the county shall pay the court costs, and the sheriff's mileage is exempt from payment under the provisions of Section 57.410, RSMo 1949.

(b) The examination and certification of fee bills of criminal cases finally determined in magistrate court, under the provisions of Section 550.190, RSMo Cum. Supp. 1955, is a discretionary duty of the magistrate judge. No statutory duty is imposed upon the judge to examine and certify to the mileage of a sheriff of a third or fourth class county in a criminal case when the costs shall be paid by the county, and the sheriff's mileage is exempt from payment under the provisions of Section 57.410, RSMo 1949.

3. In the election of directors of an enlarged school district printed ballots shall be used, and are necessary to a valid election. Sections 165.687, 111.400, RSMo 1949, and 165.330, RSMo Cum. Supp. 1955, shall be followed in holding such election.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly,

John M. Dalton
Attorney General

Enclosures
PNC:db:lc:gm