

SHERIFFS FEES: Mileage--how determined.

June 8, 1938

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Mr. W. R. J. Hughes
Prosecuting Attorney
Iron County
Ironton, Missouri

Dear Sir:

We have your request of May 21st, for an opinion, which in part is as follows:

"When the audit of County Officials was made here lately, the final report showed that the former sheriff was charged with something like \$300.00 for mileage in excess of what the auditors determined was the proper mileage charge for serving warrants and other criminal process. The amount found by the auditors to be due from the sheriff appears on their report as a lump sum; no particular instances of overcharge are pointed out. The former sheriff, John W. Harris, tells me that he is absolutely unable to ferret out the particular warrants he is supposed to have overcharged on.

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I do know that the sheriff puts many extra miles on his speedometer that would not appear there if the men he goes after accommodately stay at home and wait to be arrested; in this county, the sheriff seldom is able to arrest the first time he goes to the home of the

June 8, 1938

man charged, and is generally led a merry chase through the woods before he finally lands his man: there should be a way that the sheriff can, legitimately, bill all mileage actually travelled in making the arrest.

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I am, of course, for the sake of securing this opinion, assuming that what Harris has told me about the matter is the exact truth. It will perhaps soon become my duty to examine the matter particularly. Before doing so, I should like an opinion from your office on the following points; (a) has the sheriff a right to charge up all mileage actually travelled in making a chase, (b) may he charge all mileage if more than one trip is necessitated in making the arrest, (c) if he is so entitled as above, how should his return read, (d) is the finding of the State Auditor, based only on measurement of distances between one spot in the county and another, to be accepted as prima facie evidence of the sheriff's malfeasance?"

We shall take these requests up in the order in which they appear.

I.

The sheriff is entitled to mileage for all miles actually traveled in pursuit of a fugitive.

Section 11792 R. S. Missouri 1929, provides in part as follows:

"Sheriffs* * *shall be allowed for their services in criminal cases* * *ten cents for each mile actually travelled in serving* * * any writ* * *when served more than five miles from the place where the Court is held* * *."

The fees of a sheriff are set out in Section 11791 R.S. Missouri 1929, as follows:

"The sheriff or other officer who shall take a person, charged with a criminal offense, from the county in which the offender is apprehended to that in which the offense was committed, or who may remove the prisoner from one county to another for any cause authorized by law, * * *shall be allowed* * *One dollar and twenty-five cents per day for every day he may have such prisoner under his charge* * *and five cents for every mile necessarily travelled in going to and returning from one county to another* * *."

It is therefore the opinion of this office that the sheriff is entitled to mileage for miles actually traveled in serving any writ or warrant. The sheriff is not entitled to fees for an unsuccessful chase of the prisoner.

II.

The sheriff is entitled to mileage for only one trip made in serving the warrant.

We find no statute which authorizes the payment of mileage fees to a sheriff for an unsuccessful attempt to serve a writ. The general rule is stated in Section 1195, 57 C.J. p. 1130, as follows:

"In a majority of jurisdictions a sheriff is not entitled to, as a matter of right, and cannot recover, mileage for travel in attempting to serve process or make an arrest which was not actually or lawfully served or made, and even though he ultimately served the process or made the arrest, he cannot charge mileage for previous unsuccessful attempts; * * *"

This appears to be the generally established rule with reference to the compensation of sheriffs as established by the following cases: Yavapai County vs. O'Neal, 29 Pac. 430; Braughton vs. Santa Barbara County, 65 Cal. 257, 3 Pac. 877.

It is now well settled in this state that the right to compensation in a public office must be derived from some statute. State ex rel. vs. Brown, 146 Mo. 401, 1. c. 406.

It is therefore the opinion of this office that a sheriff is entitled to charge only mileage for one trip in which the warrant or capias is served, and that he is not entitled to charge mileage for previous unsuccessful attempts to serve the warrant.

III.

Fees for mileage not determined by measurement of distances between points involved.

There is no hard and fast rule by which to determine the proper mileage of an officer in serving a writ. The statutes covering such fees and mileage were never intended to be interpreted so as to pay fees for a given distance "as the crow flies".

Section 11791 R.S. Missouri 1929, provides that the sheriff is entitled to mileage for every mile necessarily traveled. Section 11792 allows the sheriff mileage for each mile actually traveled in serving the writ. We think it is within the meaning of both statutes that the sheriff shall be paid mileage for all miles actually and necessarily traveled in serving the writ.

June 8, 1938

If a sheriff, upon going to the usual place of residence to serve a writ, finds that the defendant has fled, it then becomes the duty of the sheriff to pursue the defendant under Section 3492 R. S. Missouri 1929. If the pursuit of such defendant is continuous and there be an extension of the original trip made by the sheriff in order to serve the warrant, as distinguished from a new trip, the sheriff is entitled to mileage for the miles actually traveled in pursuit of the defendant when such pursuit results in the arrest of the defendant. The return of the sheriff on the warrant should show the total mileage and between what points, traveled by the sheriff in pursuit of the defendant, and should show that such pursuit terminated in serving the writ.

It is therefore the opinion of this office that the sheriff is entitled to mileage for miles actually and necessarily traveled in serving a warrant or other duly authorized writ.

Respectfully submitted,

FRANKLIN E. REAGAN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

FER:MM.