

JURORS: Jurors not on the regular panel but who are retained on the panel of qualified jurors from which the jury is selected, are entitled to their per diem and mileage.

11797 R.S. Mo. 1929
11-23

November 16, 1933.



Hon. S.L. McClure,
Judge of the Probate Court,
Gallatin, Missouri.

Dear Judge:

This department is in receipt of your letter of November 6, 1933 in which you request an opinion as to the following state of facts:

"The Probate Court of Daviess County would very much appreciate your opinion on the following:

Some few weeks ago we had an insanity hearing, and a jury of 18 men were summoned and qualified to try the cause at issue. But of course 6 of these men had to be stricken, and were stricken off.

The question which has arisen is would these six men be entitled to fees?"

I.

Jurors who are not on the regular panel but who are retained on the panel of qualified jurors from which the jury is selected, are entitled to their per diem and mileage.

Section 11797, R.S. Mo. 1929 provides as follows:

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

For each juror attending a view, inquest or execution of a writ of ad quod damnum, per day....\$1.00

For each person who shall be summoned, attend and report for duty as a juror in any case

before a justice of the peace, per day\$.75

For each mile traveled in going to and returning from the place of trial, in attending any trial before a justice of the peace, per mile.....05

For each person summoned, attending and reporting to any court of record, per day, except as otherwise provided by law.....1.00

For each mile traveled in going to and returning from the place of trial, in attending any trial before a court of record, per mile.....05

All fees allowed jurors as above shall be taxed as costs in the cases, respectively, in which they were summoned; but juries serving in more than one case on the same day, at the same place, shall only be allowed fees in one case; and any juror, who shall claim fees for attending in two or more cases, on the same day, at the same place, shall not be allowed fees for that day."

It will be noticed that Sec. 11797, supra, refers to courts of record. Article VI, Section 34, Constitution of the State of Missouri, provides in part as follows:

"The General Assembly shall establish in every county a probate court, which shall be a court of record. *****"

Section 1826, R.S. Mo. 1929 provides as follows:

"The Supreme Court of the State of Missouri, the courts of appeals, the circuit courts, the county courts and the probate courts in this state shall be courts of record, and shall keep just and faithful records of their proceedings."

Section 2045, R.S. Mo. 1929 provides as follows:

"A probate court, which shall be a court of record, and consist of one judge, is hereby established in the City of St. Louis, and in every county in this state."

In the case of State ex rel. v. Wilder, 196 Mo. 418, the Court had before it the proposition of whether or not persons claiming fees for juror service are entitled to their fees as jurors notwithstanding they were not on the regular panel, nor were they on the panel of forty qualified jurors to try the case. In passing upon this question, the Court of necessity passed upon the question presented here in your letter. The Court held (l.c. 434):

*****Section 3784, Revised Statutes, 1899, which provides: 'Each juror not on the regular panel and summoned to sit as a juror in any criminal cause wherein the offense charged is punishable with death, or by imprisonment in the penitentiary for life, or for not less than a specified number of years and no limit to the time, shall be allowed the sum of one dollar per day for each day that he may be in attendance on said court, and five cents per mile for each mile traveled in going to and returning from said court, whether he sits in the trial of the cause or is challenged off.'

After a careful consideration of the provisions of that section we have reached the conclusion that it only embraces such jurors as were qualified upon the panel of forty from which the panel of twelve to try said cause were to be selected. It is apparent from the terms employed in the section above quoted that the term 'juror', as used in that section, means a qualified juror. This is made manifest by the closing terms of the section which says that the juror shall be entitled to his per diem and mileage 'whether he sits in the trial of the cause or is challenged off.' It is clear that this term would be absolutely meaningless if every person who was summoned in pursuance of the venire issued by the court to serve as jurors, were embraced in the provisions of that section and entitled to claim for jury service, notwithstanding they were not on the qualified panel of forty. That section simply means that the jurors who are not on the regular panel but are retained on the qualified panel of forty jurors from which the jury to try the cause must be selected, are entitled to their per diem and mileage, notwithstanding they may be challenged and not required to sit in the trial of the cause.'"

CONCLUSION

In view of the foregoing, it is the opinion of this department that the six men qualified to try the cause at issue

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but stricken off are entitled to their fees as set out in Section 11797, R.S. Mo. 1929.

Very truly yours,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General

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