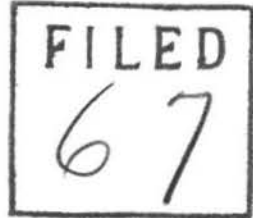


Sheriffs:

CRIMINAL COSTS: Sheriff who is Superintendent of Public Welfare not entitled to mileage for investigating criminals.

July 21, 1943

7/27



Mr. Robert V. Niedner
Prosecuting Attorney
St. Charles County
St. Charles, Missouri

Dear Sir:

We are in receipt of your letter of July 9, 1943, in which you request an opinion from this department, which reads as follows:

"The Sheriff of St. Charles County is the duly appointed Superintendent of Public Welfare in the County under Court order fixing a small monthly salary and allowing him 5¢ per mile for traveling in the course of his duty as such County Superintendent of Public Welfare. The question has been raised whether or not he may bill the County Court for mileage at 5¢ per mile for investigating and examining circumstances which may lead to the apprehension of criminals, i.e., does Section 9727 of the Revised Statutes of Missouri for 1939 authorize the County Court to pay the County Superintendent of Public Welfare 5¢ per mile for investigation of complaints that crimes have been committed which may or may not result in arrests upon the basis of the above appointment including the mileage order."

Under the facts in your request the investigation by the sheriff is for the apprehension of criminals and the five cents per mile allowed by the county court can be considered an indirect way of allowing criminal fees.

Section 13413, R. S. Mo. 1939, sets out the specific fees of a sheriff in criminal actions.

Section 13414, R. S. Mo. 1939, declares the amount allowed for mileage in criminal cases and in all proceedings for contempt or attachment.

Section 13415, R. S. Mo. 1939, reads as follows:

"No sheriff or ministerial officer in any criminal proceeding shall be allowed any fee or fees for any other services than those in the two preceding sections enumerated, or for guards not actually employed."

Under the above section no sheriff shall be allowed any fees except those specifically set out in Sections 13413 and 13414. In reading Sections 13413 and 13414, we find no allowance of mileage to a sheriff who is investigating a crime for the purpose of apprehending a criminal.

Where no mileage or fee is set out specifically by statute, then the sheriff performs the duties gratuitously and, if the sheriff claims such a fee he must point out the statute allowing him fees or mileage. It was so held in the case of Nodaway County v. Kidder, 129 S. W. (2d) 857, Par. 5-7, where the court said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S. W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656."

Under Section 9720 of Chapter 56, Article 11, R. S. Mo. 1939, the county court shall fix the salary of the County Superintendent of Public Welfare and of his assistants in its county. The county court under that section could allow mileage to the Superintendent of Public Welfare, who, in your request, is the Sheriff, providing that the duties he performs are the duties set out in Chapter 56, Article 11. Under Section 9727 of that article it specifically states and sets out the duties of the County Superintendent of Public Welfare. Under that section we find no provision for the Superintendent of Public Welfare to investigate crimes for the purpose of apprehending criminals.

The county court could allow mileage to the Superintendent of Public Welfare for performing the duties as set out in Section 9727, R. S. Mo. 1939. Section 9727, R. S. Mo. 1939, reads as follows:

"It shall be the duty of the county superintendent of public welfare to investigate the conditions of living among the poor, sick and delinquent in the county and to examine thoroughly into causes of crime and poverty in the county and to make recommendations from time to time to the state board of charities and corrections, and to proper local authorities as to any change in conditions or in legislation necessary to prevent or reduce poverty, crime or distress in the state. The superintendent of public welfare and his assistants may be deputed as agents of the state bureau of labor statistics and when they are so deputed as agents of the state bureau of labor statistics, they shall exercise all the authority to make investigations which is granted the state bureau of labor statistics."

CONCLUSION

It is, therefore, the opinion of this department that the county court of St. Charles County cannot allow the Sheriff of St. Charles County mileage at five cents per mile for travel-

ing in the course of his duty as County Superintendent of Public Welfare, when the Sheriff is not performing that duty but is investigating and examining circumstances which may lead to the apprehension of criminals.

It is, therefore, our opinion that the Sheriff of St. Charles County cannot indirectly receive mileage for investigating criminal cases, since this is directly forbidden by Section 13415, R. S. Mo. 1939.

Respectfully submitted,

W. J. BURKE
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

WJB:CP