

*Sheriff:*

CRIMINAL COSTS: - Sheriff cannot receive mileage or transportation costs of a paroled convict in transporting him to Army Induction Station.

---

*✓ 1/26*

May 25, 1942

Hon. George L. Robertson  
Prosecuting Attorney  
Chariton County  
Keytesville, Missouri

FILE  
76

Dear Sir:

We are in receipt of your request for an opinion, under date of May 22, 1942, which reads as follows:

"This inquiry is made in reference to payment of fees for mileage and transportation of a prisoner confined and being held in the County Jail, after sentence for a felony, and under an order of parole by the Circuit Judge, contingent upon his being accepted for Army Service at the induction Station at Jefferson Barracks.

"The direct question is, should the State or County or either, pay the mileage or transportation costs of the Sheriff in taking the prisoner to the Induction Station and if neither should pay is there a proper way for the Sheriff to receive such fees?

"This request is made at this time in view of the War Emergency and the

desirability of obtaining able-bodied men, not in necessary occupations, for the Army. The prisoners should not be turned at large without some protection to the public and the Sheriff can not afford this transportation at his own expense."

The statute which allows sheriffs fees and mileage for taking convicts to the penitentiary is Section 13413, R. S. Missouri, which partially reads as follows:

"Fees of sheriffs, marshals and other officers. - 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 the services of taking convicts to the penitentiary, the sheriff, county marshal or other officer shall receive the sum of three dollars per day for the time actually and necessarily employed in traveling to and from the penitentiary, and each guard shall receive the sum of two dollars per day for the same, and the sheriff, county marshal or other officer and guard shall receive five cents per mile for the distance necessarily traveled in going to and returning from the penitentiary, the time and distance to be estimated by the most usually traveled route from the place of departure to the penitentiary; the sum of five cents per mile for each mile traveled, while being taken to the penitentiary, shall be allowed to the sheriff to cover all expenses of each

convict while being taken to the penitentiary; and all persons, convicted and sentenced to imprisonment in the penitentiary at any term or setting of the court, shall be taken to the penitentiary at the same time, unless prevented by sickness or unavoidable accident. \* \* \* \* "

Section 13415 R. S. Missouri, 1939, which refers to Section 13413, supra, 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."

The rule as to rendition of services by public officers, and the payment therefor, is fully discussed in the case of *Nodaway County v. Kidder*, 129 S. W. (2d) 857, Pars. 5-8, 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.

Hon. George L. Robertson

(4)

May 25, 1942

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel Euder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 645."

CONCLUSION

In view of the above authorities, it is the opinion of this department, that neither the state, nor the county is authorized, by statute, to pay the mileage or transportation costs of a sheriff in taking the prisoner, who has been convicted and paroled, to the Army Induction Station at Jefferson Barracks, St. Louis, Missouri.

It is further the opinion of this department that the statute does not provide any proper way for the sheriff to receive such expenditures, fees or transportation costs.

Respectfully submitted

APPROVED:

W. J. BURKE  
Assistant Attorney General

---

ROY McKITTRICK  
Attorney General of Missouri

WJB:RW