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) FEES: Constable entitled to commitment fees only when person committed is a criminal.

Sheriff entitled to commitment fees regardless of whether person committed is adjudged a criminal.

November 14, 1935.

11-16



Judge Arthur S. Shaw,  
308 Thompson Avenue,  
Excelsior Springs, Missouri.

Dear Sir:

This will acknowledge receipt of your inquiry which is as follows:

"In your opinion who is entitled to the One Dollar mentioned in Sec. 11791 of the Revised Statutes of Missouri (Fees of Sheriffs and other Officers) for committing any person to Jail. Our Circuit Clerk says it is a fee belonging to the Sheriff for any prisoner placed in the County Jail regardless who may bring him in. I contend that if I give a commitment to the Constable or other Officer to commit a person to Jail to await Trial or serve a sentence that Officer commits him and the Jailor receives him. If I am wrong and I give a commitment to the Sheriff or his deputy what fee if any is he entitled to. The Clerk says there are no fee provided for the Sheriff in such work. If that be the case and the Sheriff brings a Robber or other desperate criminal I must turn him over to the Constable to take to Jail regardless as to whether he is a competent person or not or the Sheriff must make the trip for nothing. Please read foot notes under Sec. 11756."

In the case of *People v. Kulan*, 3 Mich. 42, 49, the term "commitment" is said to mean the process by which a person is confined under the order of a court at any time before or after final sentence.

In the case of *Commonwealth v. Barker*, 133 Mass. 399, 400, it is stated that a commitment is a warrant or order by a court or magistrate directing a ministerial officer to take a person to prison.

In the case of *Duthmann v. People*, 67 N. E. 821, 822, 203 Ill. 260, it is stated that a commitment has in law a well defined meaning and signifies the act of sending an accused or convicted person to prison.

In the case of *State v. Clark*, 70 S. W. 489, 492, 170 Mo. 67, in which case is cited the case of *Thomas v. St. Louis County*, 61 Mo. 547, the court in construing the words "committing any person to jail" as used in the statute relating to the fee bill of a sheriff, says that they relate to the execution by the sheriff of an order or warrant of commitment made or issued by some officer exercising judicial functions.

Section 3426, R. S. No. 1929, provides as follows:

"If the defendant shall fail or refuse to enter into recognizance, the justice shall commit him to the common jail of the county, or to the calaboose or other prison of the city where the trial is pending, there to remain until the day fixed for the trial of the charge alleged against him."

Section 3443 prescribes the form of the commitment, stating that it may be directed to the sheriff or any constable.

Section 3446 provides:

"All proceedings upon the trial of misdemeanors before justices of the peace shall be governed by the practice in criminal cases in courts

of record, so far as the same may be applicable, and in respect to which no provision is made by statute."

The above sections refer to proceedings before justices of the peace in misdemeanors.

The sections pertaining to the authority of justices of the peace as to commitments in felony cases are now referred to.

Section 3474 authorizes the justice of the peace to commit a person at his preliminary; likewise does Section 3476, which states as follows:

"When such person fails to recognize, he may be committed to prison by an order under the hand of the magistrate, stating concisely that he is committed for further examination on a future day, to be named in the order, and on the day appointed he may be brought before the magistrate, by his verbal order to the officer who made the commitment, or by his order in writing to a different person."

Sections 3487 and 3488 prescribe certain authority and duties given to and laid on justices of the peace as to committing.

Thus it will be seen under what circumstances justices of the peace may issue commitments, and they may be directed by him to either the sheriff or the constable.

Section 11777, relating to fees of constables, among other things, provides that he shall be entitled to \$1.00 "for taking a criminal to jail."

Section 11791, relating to fees of sheriffs, county marshals and other officers, provides that they shall be allowed fees for their services in criminal cases, among other things, "For committing any person to jail, \$1.00."

Section 11777 is the specific statute defining constable fees, while Section 11791 is a general statute defining the fees of sheriffs, county marshals and other officers.

It would appear that the specific statute defining the constable's fees must govern as to his fees and that he does not come within the class of "other officers" as used in Section 11791.

No officer is entitled to compensation for services which he performs in his official capacity unless the statute clearly authorizes the payment thereof.

In the case of King v. Riverland Levee District, 279 S. W. 195, 1. c. 196, the court says:

"It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract, and that compensation exists, if it exists at all, solely as the creation of the law and then is incidental to the office. \* \* \* \* \* Furthermore, our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. Wedeking vs. McCracken, 60 Mo. App. loc. cit. 656, to the effect that the rendition of services by a public officer is to be deemed gratuitous unless a compensation therefor is provided by statute, and that if by statute compensation is provided for 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 the same."

In construing statutes relating to the payment of fees, they are given strict construction.

It will be noted that the statute defining constable's fees says that the constable is entitled to a fee for "taking a criminal to jail." The law does not stamp a man as a criminal until after he has on his voluntary plea or after trial and judgment been adjudged guilty of a crime. It would appear from this that the constable is only entitled to the fee of \$1.00 for committing a person after he has been adjudged guilty. On the other hand, the sheriff is entitled to the fee "for committing any person to jail."

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Our view is that committing a person to jail is the physical deliverance of the defendant from the court room where the justice presides to the jailer, and the authority to so deliver the prisoner is the paper that is issued by the justice directing the officer to so deliver the prisoner to the jailer.

CONCLUSION

It is our opinion that if the commitment issued by the justice of the peace is directed to the sheriff and the sheriff executes the same, the sheriff is entitled to the \$1.00 fee as provided for by the above quoted statutes. If the commitment is issued by the justice of the peace and directed to the constable, and the defendant is a "criminal" within the meaning of the law, and the constable executes the commitment by delivering the defendant to the jailer, then the constable is entitled to the \$1.00 fee provided for by the above Section 11777 for so doing, and under no other circumstances.

Yours very truly,

DEAKE WATSON,  
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney General.

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