

SHERIFFS - State not liable for mileage for transporting prisoners for safekeeping;
COUNTIES - Liable for sheriffs' fees in transporting prisoners for safekeeping.

November 4, 1935

11-6



Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Sir:

We have your request of October 14th for an opinion, which request is as follows:

"This office is in receipt of a fee bill from the Circuit Clerk of Dunklin County, Missouri, wherein the sheriff of said county has charged \$102.20 for his per diem and mileage and for the per diem and mileage of two guards pursuant to an order of court that C. D. Ward, under death sentence in this case, be conveyed for safe-keeping from the city jail in Kennett, Dunklin County, Missouri, to the city jail in the City of St. Louis, Missouri. Also, said sheriff has charged \$102.20 for the return of this defendant from the City of St. Louis to the City of Kennett pursuant to an order of court because of the excessive per diem for defendant's board in the city jail of St. Louis. Also, the sheriff has charged \$146.20 for his per diem and mileage and for two guards' per diem and mileage in transporting defendant to

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the State Penitentiary at Jefferson City for safe-keeping pursuant to an order of the circuit court. Also, said sheriff has charged \$146.20 for sheriff's per diem and mileage of two guards for the return of said C. D. Ward from the penitentiary to the city jail at Kennett, Missouri, to execute the death warrant in this case.

Section 12043, R. S. Mo. 1929 provides:

'There shall be erected and maintained in each county, at the established seat of justice thereof, a good and sufficient court house and jail.'

It is the request of this office that we have an opinion as to whether or not the state is liable for the transportation of this defendant to and from the City of St. Louis and to and from the State Penitentiary at Jefferson City, Missouri, as he was transported to said places of confinement for the purpose of his safe-keeping."

We call your attention to that portion of Section 11791, R. S. Mo. 1929 relating to fees of sheriffs, which in part provides as follows:

" * * the expenses incurred in transporting prisoners from one county to another, occasioned by the insufficiency of the county jail or threatened mob violence, shall be paid by the county in which such case may have originated: * * "

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A statute which specifically taxes costs has been construed to be controlling over general statutes taxing costs upon the losing party. State ex rel. v. Holladay, 67 Mo. 299.

It is, therefore, the opinion of this office that the fees of the sheriff as outlined in your request for an opinion, are not chargeable to the State, but under the statute are chargeable to the county.

Yours very truly,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

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

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