

FEE OF MESSENGER-To be fixed in amount by governor.
EXTRADITION OF FUGITIVES-Expenses of messenger fixed by governor.

January 5, 1934



Hon. Walter G. Stillwell
Prosecuting Attorney
Marion County
Hannibal, Missouri

Dear Sir:

Your request for an opinion under date of December 18, 1933, is as follows:

"I have been requested by Arch O. Leonard, Sheriff of Marion County, to obtain an opinion from your office as to what compensation per mile an officer is entitled when he goes to another State and returns a prisoner to this State, a proper requisition having been obtained from the Governor of Missouri and honored by the Governor of the other State."

In this connection, we call your attention to Sections 3567 and 3568 R. S. Mo. 1929 which are as follows:

Section 3567:

Whenever the governor of this state shall demand a fugitive from justice from the executive of another state or territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the state, to some messenger, commanding him to re-

ceive such fugitive and convey him to the sheriff of the county in which the offense was committed, or is by law cognizable."

Section 3568:

"The expenses which may accrue under the last section, being first ascertained to the satisfaction of the governor, shall, on his certificate, be allowed and paid out of the state treasury, as other demands against the state."

You will note that the sheriff does not perform any of the duties of messenger in any official capacity he may hold in the State of Missouri, but performs such services in the official capacity of an appointed agent or messenger of the governor of the State of Missouri. You will note that under the provisions of Section 3568 that before any expenses can be allowed to a messenger they must meet "the satisfaction of the governor". In *State ex rel. v. Allen*, 180 Mo. 27 l. c. 31, the court, speaking of the meaning of such in Section 3568 R. S. 1929 (then Section 2744 R. S. 1899) said:

"*the duty of determining the question of the compensation and expenses of such messenger, is vested solely in the Governor, and he is the head of a co-ordinate branch of the government, and all his acts as such are in that capacity, and hence he can not be interfered with in the discharge of his duties by the courts." The relator has per-

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formed a service for which he is entitled to be paid. "But this court has no power in the premises. The Governor alone has the power to determine how much shall be paid, and to order it paid. Until he does so the Auditor can not lawfully issue a warrant therefor."

Furthermore, under the provisions of Section 11405, R. S. Mo. 1929 relating to the duties of the state auditor, the expense account of a messenger of the governor in returning fugitives to the State of Missouri cannot be paid until the head of the department (the governor) shall fix the expense account at a just and reasonable figure.

It is, therefore, the opinion of this office that the authority to fix the amount of expense payable to any messenger for returning a fugitive to the State of Missouri is vested exclusively in the governor, and until such expenses account is approved by the governor, the state auditor has no authority to pay it.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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