

SHERIFF'S
FEES:

Not entitled to charge fee unless service
is rendered.

January 23, 1943

Honorable Thomas G. Woolsey
Prosecuting Attorney
Cooper County
Boonville, Missouri

Dear Mr. Woolsey:

Under date of January 13, 1943, you wrote
this office requesting an opinion as follows:

"Section 13411 contains a schedule of fees allowed Sheriffs for certain duties. The practice has been in this County, I am told, that the Sheriff shall collect three dollars as a part of the cost in misdemeanors instituted by the Highway Patrolmen. These officers are on salaries and are not authorized to collect fees, etc.

"In a case where the Sheriff does not make the arrest, does not know the circumstances, but who is called upon to take charge of the prisoner in the event he is put in Jail, collect the costs and fine and keep a record of same for his report to this office and to the County Treasurer, just what fees and how much cost is he entitled to receive? I am informed that your office gave an opinion holding that the Sheriff was entitled to a fee of \$3.00, the same as though he were present and made the arrest, served the warrant and appeared as a witness. Please give me the benefit of your interpretation to this section of the law."

A search of the opinion file has been made for

any opinion stating a sheriff would be entitled to a fee of three dollars in a situation similar to the one detailed in your letter and no such opinion has been found.

Your letter mentions Section 13411 R. S. Mo., 1939. The fees permitted to be charged by sheriffs in criminal cases are set out in Section 13413 R. S. Mo., 1939. The first clause of this section is as follows:

"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: * * * *"

You will observe the quoted portion above states that sheriffs shall be allowed for their "service". The noun "service" is defined in Webster's International Dictionary as follows:

* * * * *

"2. Performance of labor for the benefit of another, or at another's command; attendance of an inferior, hired helper, slave, etc.

In silence did him serve as a squire.

Tennyson.

* * * * *

"4. The deed of one who serves; labor performed for another; duty done or required; office.

The last piece of service I did for . . .
. King Charles. Dryden. * * * *

The plural of this word is used in Section 13413.

The sheriff is only authorized to make a charge for some act performed. It follows, if he performs no act or service he is not entitled to charge or collect any fee.

The following excerpts from Section 13413, supra, are set out for your guidance:

* * * * *

"For serving and returning each capias, for each defendant. . . . \$1.00

* * * * *

"For committing any person to jail. . . . 1.00
* * * * *

Under the provisions of Section 13414 the sheriff is authorized to collect mileage for travel serving process more than five miles from the place of holding court. In the situation mentioned in your letter where the sheriff merely takes charge of the prisoner after he has been found guilty, places him in jail, collects the costs in fine he would be entitled to the fee allowed for committing the person to jail any mileage that might be necessarily traveled and ten per cent of the costs collected. A portion of Section 13413, supra, is as follows:

* * * * * The clerk shall tax all the costs in the case against such defendant and deliver a certified copy of the same to the sheriff, who shall immediately proceed to collect such costs from the defendant, together with ten per cent on the amount of costs, so collected, as a commission for collecting the same, and the clerk shall receive of such commission an amount equal

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to ten per cent of the fees collected and due such clerk, and the remainder of such commission shall be retained by the sheriff: * * * "

Your attention is invited to Section 4232 R. S. Mo., 1939, which prohibits the collection of witness' fees by an officer unless the officer testifies some point five miles or more distant from his place of residence.

It would be impossible to prepare a fixed statement of costs that would be applicable to each case as in every case fees which could be lawfully charged and collected would be different.

In addition to the foregoing there is enclosed herewith a copy of an opinion written June 6, 1939, by Lawrence L. Bradley, assistant Attorney-General, to Honorable A. A. Bayles, Sheriff of St. Francois County, which treats of the fees a constable may charge and your attention is particularly called to the fourth section of the opinion. It is believed conclusion there announced is also applicable to your question.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

WOJ:FS