

Answer by letter-Craft

October 15, 1969

OPINION LETTER NO. 449



Mr. John C. Vaughn, Director
Division of Budget and Comptroller
State Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Vaughn:

Recently, you contacted me with regard to questions raised by House Bill No. 35 and House Bill No. 49 recently passed by the Seventy-fifth General Assembly and effective October 13, 1969.

Briefly, House Bill No. 35 amends Section 483.530 by substituting a fee schedule for an item by item accrual of fees which the clerks of courts of common pleas having criminal jurisdiction, clerks of courts of criminal correction, and certain circuit court clerks shall collect for performing services.

House Bill No. 49 provides that certain officials are to receive ten cents per mile in reimbursement unless a higher rate is otherwise provided by statute.

With regard to the above legislation, you have raised the following specific questions:

House Bill No. 35:

1. What rule should be utilized by the state in determining when the fee schedule should be utilized for reimbursement for costs?
2. Will the clerks of the circuit court and the clerks of criminal correction each receive \$7.50 where a particular case is handled by each clerk?

House Bill No. 49: (Sec. 57.095)

Does the ten cents per mile reimbursement section govern in Section 57.290 where the sheriff is transporting prisoners.

Mr. John C. Vaughn

House Bill No. 35:

1. With regard to the date upon which the fee schedule should be utilized, this office has prepared an official opinion, Opinion No. 428, which is enclosed.

2. Section 479.330 provides that all provisions of the law concerning costs in criminal cases "shall be held to apply to the St. Louis Court of Criminal Correction." It is apparent from Chapter 479, RSMo 1959, that it is contemplated that proceedings in certain cases will be in both the court of criminal correction and the circuit court. Since House Bill No. 35 repealed Section 483.530, RSMo 1959, under which the St. Louis Court of Criminal Correction was to determine fees and since the amended section specifically applies "for each criminal case" handled by each of the clerks therein listed, it is our opinion that the clerk of the circuit court and the clerk of the court of criminal correction should collect the statutory fees there provided when a case is handled successively by the two clerks.

House Bill No. 49:

Section 57.290 specifies the fee to be paid with regard to the performance of a number of services set out therein. This section provides:

"Sheriffs, county marshals or other officers shall be allowed fees for their services in criminal cases. . ."

In Section 57.290(3) it is provided:

". . . the sheriff, . . . shall receive seven cents per mile for the distance necessarily traveled in going to and returning from . . ."

In Section 57.290(4) it is provided:

"The sheriff . . . who shall take a person . . . shall be allowed . . . seven cents per mile for every mile necessarily traveled in going to and returning from . . ."

This subsection contains extensive provisions with regard to the transportation of prisoners and the amount to be received by the sheriff for such transportation. The moneys received by the sheriff are not to be retained personally but are to be paid over to the county. The Missouri statutes contain extensive provision for the payment by the officer receiving fees to the county. Thus, the payments made under Sections 57.290(3) and 57.290(4) is as the section denominates it, a fee payable to the sheriff.

Mr. John C. Vaughn

It has long been held in Missouri that fees are dependent upon statute and that these sections are strictly construed. Cramer v. Smith, 168 S.W.2d 1039, 1040 (Mo. en banc 1943).

Thus, it is our opinion that the provisions of House Bill No. 49 should not be interpreted to apply the sections setting forth the mileage allowance paid as a fee. House Bill No. 49 is a reimbursement section and should be interpreted as applying to those situations where the persons there described are entitled to a mileage allowance personally.

I trust that the above satisfies the question which you have with regard to these two legislative enactments. If we can be of further assistance, please feel free to contact me.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 428
10-14-69, Geers