

Answer by letter-Craft

December 19, 1969

OPINION LETTER NO. 469

Honorable Robert H. Branom  
State Representative, District 35  
7701 Forsyth, Room 574  
Clayton, Missouri 63105



Honorable Kenneth J. Rothman  
State Representative, District 36  
130 South Bemiston Avenue  
Clayton, Missouri 63105

Dear Representatives Branom and Rothman:

In your recent letter you asked the following question with regard to House Bill No. 169 which was adopted by the 75th General Assembly:

"The question is: Can a Sheriff and Constable charge mileage in addition to the \$5.00 charge on an original summons or writ?"

House Bill No. 169 adopted by the 75th General Assembly provides:

"Section 1. Chapter 57, RSMo, is amended by inserting therein a new section to be known as Section 57.286, to read as follows:

"57.286. In all class one counties having a charter form of government the fees to be charged for the services of the sheriff shall be as follows:

"For summoning a standing jury, for  
each juror summoned. . . . . \$ .50

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"For serving every summons or original writ and returning the same for the first defendant. . . . .	5.00
"For serving every summons or original writ and returning the same for each succeeding defendant. . . .	1.50
"For serving a writ of scire facias or attachment for each defendant. .	1.50
"For taking and returning every bond required by law. . . . .	1.00
"For serving a writ or order of injunction for each defendant. . .	1.50
"For serving a habere facias possessionem or sequestration. . . . .	2.00
"For levying every execution . .	3.50
"And when served on real estate, the officer shall be bound to go on the land, or sufficiently near it, if necessary, in order to describe it properly. For making, executing and delivering a sheriff's deed, to be paid by the purchaser, all tracts of land purchased at the same sale to be included in one deed, if the purchaser desires it. . .	5.00
"For every return of non est on a writ, original or judicial . . .	1.00
"For return of nulla bona. . . .	1.00
"For executing a writ of ad quod damnum in any case drawing the inquisition and return the same . . . .	2.00
"For each mile actually traveled in serving any venire summons, writ, subpoena or other order of court when served more than five miles from the place where the court is held, provided that such mileage	

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shall not be charged for more than  
one witness subpoenaed or venire  
summons or other writ served in the  
same cause on the same trip. . . .10  
\* \* \*

The portion of House Bill No. 169 set forth above, and the balance of the bill which is not set out is intended to specify the fees to be charged by the sheriff for the services therein provided. The second item indicates that the sheriff is to charge \$5.00 for serving "every summons or original writ and returning the same for the first defendant." The last item set forth above provides for the charge of 10 cents per mile in serving "any venire summons, writ, subpoena or other order of court when served more than five miles from the place where the court is held."

Your question is whether the sheriff may charge 10 cents per mile when serving a summons or original writ when the service is accomplished more than five miles from the place where the court is held.

The statutory provision allowing mileage is couched in broad terms and includes the general language "any . . . writ" and "or other order of the court." You will note that in addition to the "original writ" for which the \$5.00 fee is provided, the statute provides a fee for a "writ of scire facias," a "writ or order of injunction" and a "writ of ad quod damnum." Thus, if mileage is not allowed when serving an original writ, it follows that it should not be allowed when serving the other writs specifically mentioned. However, we believe that the broad term "any . . . writ" was intended to include the various specific writs previously mentioned. Similarly, a summons, although not specifically provided for in the mileage provision, is an "order of the court."

Thus, it is our opinion that the general terms for the service of which mileage is allowed includes within its scope the service of a summons or original writ.

Based on the above, we are of the opinion that the sheriff may charge a fee for serving every summons or original writ and, in addition thereto, he may charge 10 cents per mile for every mile actually traveled in serving a summons or original writ when served more than five miles from the place where the court is held.

By its terms House Bill No. 169 adopted by the 75th General Assembly does not govern the fees to be collected by constables. Section 63.140, RSMo 1959, provides the fees to be allowed constables in class one counties.

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Section 63.140, RSMo 1959:

"Constables shall be allowed fees for their services as follows:

"For serving a summons, rule, notice or order of a magistrate in any case . . . . .	\$ .60
* * * * *	
"For each mile actually traveled in serving any process. . . . .	.10
* * *"	

In our opinion the statute quoted above clearly provides that constables are to be allowed mileage in addition to the fee provided for serving the papers enumerated in Section 63.140, RSMo 1959.

Yours very truly,

JOHN C. DANFORTH  
Attorney General