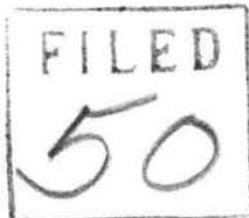


SHERIFFS:
MILEAGE:
COSTS:

When subpoenas, summons and warrants, all in one case, are given to the sheriff for service on one trip, that for all such service by the sheriff, he is entitled to receive mileage only for service had on one person which should be computed on service to the most remote point and return. If, for good cause shown, sheriff is unable to make all such service on the same trip, he shall be entitled to additional necessary mileage required to make such service which must be approved by the prosecuting attorney and county court. However, in no case shall the sheriff be entitled to but one mileage for service in any single case on any one person.



October 16, 1953

Honorable Paul Knudsen
Prosecuting Attorney
Caldwell County
Kingston, Missouri

Dear Sir:

This will acknowledge receipt of your recent request for an opinion which reads:

"The Magistrate of our county has asked me to write for your opinion in relation to Court costs on Sheriff's mileage.

"When there are subpoenas, summons and warrants, etc., delivered to the Sheriff for service, and it is not possible for the Sheriff to serve said papers on his first trip, and he must make a second trip to serve said papers, is the Court then justified in taxing the extra mileage for the second trip as Court costs?

"If there is justification for the extra mileage, then is there a limit to the number of trips that can be made for the purpose of serving said papers, or is it left entirely up to the Court to determine what would be a reasonable mileage for said purpose?"

We assume, for the sake of this opinion, that the subpoenas, summons and warrants referred to in your request all apply to just one case. In *Ring v. Charles Vogel Paint and Glass Co.*, 46 Mo. App. 374, l. c. 377, the court held that the entire subject of costs in both civil and criminal cases

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is a matter of statutory enactment and all statutes must be strictly construed and an officer claiming costs must be able to put his finger on the statute authorizing their taxation. See also State ex rel. Brown, 146 Mo. 401, l. c. 406, wherein the court held that no public officer is entitled to any fee or compensation unless it is so provided by statute. This same rule will likewise apply to mileage. Sections 57.280 and 57.300, RSMo 1949, and Section 57.290, Vernon's Annotated Missouri Statutes, August 1953, are the particular statutory provisions providing for fees and mileage for services rendered by sheriffs and costs in the case. Section 57.280, supra, reads in part:

"57.280. Fees of sheriffs.--Fees of sheriffs shall be allowed for their services as follows:

* * * * *

"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 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. . . . * * *

"* * * No mileage fees for serving any writ, summons or other legal process shall be collected unless the sheriff shall actually travel the distance for which he makes such charge; * * *"

Section 57.300, supra, reads:

"57.300. Mileage of sheriffs in criminal cases.--Sheriffs, county marshals or other officers shall be allowed for their services in criminal cases and in all proceedings for contempt or attachment as follows: Ten cents 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

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where the court is held; provided, that such mileage 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."

The two foregoing provisions, namely Sections 57.280 and 57.300, supra, respectively, clearly indicate that it was the legislative intent that the sheriff shall serve, if at all possible, all subpoenas, summons and warrants in any one case on the same trip, and that for all such services rendered during the one trip, he shall receive only mileage for service on one person and, in such case, this mileage should be computed on service to the most remote point and return. However, this is not true, as this department has frequently held in previous opinions, when service is had on persons not in the same cause or not on the same trip.

Just what the legislative intent was in providing that sheriffs shall be entitled to only mileage for one service in serving subpoenas, summons and warrants in the same cause on the same trip is not certain. However, we believe that it was to eliminate a lot of additional and, in many instances, unnecessary costs in the case. Frequently, service on all persons can easily be made on one trip, however, we are inclined to believe that if, for some good cause, such as the sheriff being unable to serve any one person because of their absence from the address given and no one was present that service can be had upon at said address or the sheriff was unable to complete the service for lack of time, in such case it would require an additional trip to complete service and, in such instance, the sheriff would be entitled to additional mileage.

You further inquire if there is justification for extra mileage, then is there a limit to the number of trips that can be made or is it left entirely up to the court what would be a reasonable mileage for said purpose.

Under Section 550.190 and Section 550.220, RSMo 1949, it is provided that the prosecuting attorney shall strictly examine fee bills on costs in criminal cases for allowances against the state or county and when he finds them to be correct, he shall report same to the judge of the court. Under the foregoing provisions, we are of the opinion that the prosecuting attorney must approve said fee bills and that before so doing, he certainly should be convinced that any extra mileage traveled on additional trips was absolutely

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necessary and, likewise, every bill of costs presented to the county court must be examined and certified to by the judge and prosecuting attorney.

Therefore, we are of the opinion that notwithstanding the fact that summons, subpoenas and warrants all in one case were directed to the sheriff for service on one trip, if, for good cause shown, it became necessary for the sheriff to make an additional trip for such service, that he should be allowed additional mileage traveled which, of course, must finally be approved by the prosecuting attorney and court before such costs can be paid.

CONCLUSION

Therefore, it is the opinion of this department that when subpoenas, summons and warrants, all in one case, are given to the sheriff for service on one trip, that for all such service by the sheriff, he is entitled to receive mileage only for service had on one person which should be computed on service to the most remote point and return.

If, for good cause shown, the sheriff is unable to make all such service on the same trip, then he shall be entitled to additional necessary mileage required to make such service, which must be approved by the prosecuting attorney and county court. However, in no case shall the sheriff be entitled to but one mileage for service in any single case on any one person.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Aubrey R. Hammett, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

ARR/mv