

JURORS: A juror not on the regular panel and summoned to sit as a
FEES: juror in any criminal case in which the offense charged is
punishable with death or by imprisonment in the penitentiary
for life or for not less than a specified number of years and
no limit to the time, whether he should have been selected on
the panel or not, is to receive the sum of \$6 per day, if he
has traveled at least one mile in attending upon the court, and
that if he has not traveled at least one mile for compensation
shall be \$1 per day.

FILED
74

June 19, 1957

Honorable C. Frank Reeves
Prosecuting Attorney
Mississippi County
Charleston, Missouri

Dear Mr. Reeves:

This is in response to your recent request for an official
opinion based upon a letter dated June 6, 1957, to you, from
Ellis W. Howlett, Clerk of the Circuit Court of Mississippi Coun-
ty, which letter reads as follows:

"I have just recently received a copy of
House Bill No. 2 which was finally passed
and signed by the Governor and becomes law
on August 29th, 1957. This is a bill chang-
ing the fees of jurors. Sections 494.100,
404.110 and 494.120, R. S. No. 1949 were all
repealed and new sections enacted in lieu
thereof bearing the same numbers and are
the same as in the old sections except for
the fees, the change in Sections 494.100
and 494.110 increasing the fee from \$3.00
to \$6.00 and Section 494.120 changing the
fee from \$2.00 to \$6.00.

"Section No. 494.170 page 583 of the Laws of
Missouri of 1955 has been left as is.

"The meaning of Sections 494.100 and 494.110
are clear and will cause no confusion.

"Section 404.120 and Section 494.170 have al-
ways been somewhat confusing.

"In any case where a panel of thirty qualified
jurors are required it is necessary to issue
a special venire. We always have some jurors
who have to travel at least one mile or more
and usually have a juror or two who are picked
up in town and have no mileage. Under the

Honorable C. Frank Reeves

old law the juror having mileage has been paid \$2.00 plus 5¢ per mile. Under the new law as I understand it he is to be paid \$6.00 plus 7¢ per mile. Under the old law, as I have interpreted it, the juror living in town was paid only \$1.00 as is provided by sub-section (3) of Section 494.170 Laws of Missouri page 583. This does not look fair as the man living out of town is paid mileage in addition to his per diem. Now under the new law is the man living out of town traveling more than one mile to get \$6.00 per day while the man living in town is to get only \$1.00 or am I misinterpreting the meaning of Section 494.120 and, if so, what is the use of sub-section (3) of Section 494.170 Laws of 1955. I had hoped this legislature would clarify some of these jury sections but see they have not. I would like for you to get an opinion from the Attorney General on both Sections 494.120 as recently amended and on Section 494.170 Laws of 1955. I would like to have this opinion as soon as possible as I frequently have cases requiring a panel of thirty jurors."

The request to us is for an interpretation of Section 494.120 of House Bill No. 2, enacted by the 69th General Assembly, and Section 494.170, Laws of Missouri 1955.

Section 494.120 of House Bill No. 2, which will become law on August 29, 1957, reads:

"Each juror not on the regular panel and summoned to sit as a juror in any criminal case wherein the offense charged is punishable with death, or by imprisonment in the penitentiary for life or for not less than a specified number of years and no limit to the time, whether he shall have been selected on the panel or not, if he has traveled at least one mile and attended upon the court in obedience to such summons, shall be allowed the sum of six dollars per day, for each day that he may be in attendance on the court, and seven cents per mile for each mile traveled in going to and returning from the court, whether he sits in the trial of the cause or is challenged off."

(Emphasis ours.)

Honorable C. Frank Reeves

From the above section, it seems to be clear, by the language of the section, and particularly that portion which we have underlined, that the traveling of at least one mile as well as attendance upon the court in answer to a summons, is prerequisite to being paid the sum of \$6 per day. Whether or not this was the intention of the legislature we cannot say. Nor can we indulge in speculation regarding such intention. We have to proceed upon the language which the legislature employs and follow it as nearly as possible. Numbered paragraph 3 of Section 494.170, Laws of Missouri 1955, provides that each person summoned, attending and reporting to any court of record per day, shall be paid the sum of \$1. It would appear that if a person has not traveled at least one mile in attending upon the court that he is not entitled to payment of \$6 which is provided for by Section 494.120 of House Bill No. 2, but is to be paid the sum of \$1 only under the provisions of paragraph 3, Section 494.170, Laws of Missouri 1955.

We agree with you that such a distinction seems to be unfair, but such is the language of the legislature.

CONCLUSION

It is the opinion of this department that a juror not on the regular panel and summoned to sit as a juror in any criminal case in which the offense charged is punishable with death or by imprisonment in the penitentiary for life or for not less than a specified number of years and no limit to the time, whether he should have been selected on the panel or not, is to receive the sum of \$6 per day, if he has traveled at least one mile in attending upon the court, and that if he has not traveled at least one mile, his compensation shall be \$1 per day.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton
Attorney General

HPW/b1