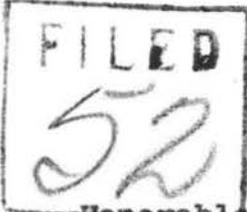


CORONER'S INQUEST: (1) Sheriff not allowed fee for summoning jurors for
SHERIFFS' FEES: coroner's inquest. (2) Sheriff not allowed mileage for
WITNESS FEES: travel in connection with coroner's inquest. (3)
JURY FEES: Sheriff allowed fee for summoning witnesses to attend
coroner's inquest. (4) Jurors and witnesses summoned
to attend coroner's inquest receive statutory per diem fee regardless of
number of summons they received or number of inquests actually attended
on same day. (5) Where multiple deaths result from one casualty, coroner
should conduct one inquest to determine cause of death of all persons who
died as a result of said casualty.



July 28, 1958

Honorable Lon J. Levvis
Prosecuting Attorney
Audrain County
Mexico, Missouri

Dear Mr. Levvis:

This is in answer to your opinion request to this office dated
May 31, 1958, which reads as follows:

"On May 18, 1958, in this county, six persons died, all within a few minutes of one another, as a result of two connected automobile collisions; that is, car number 1 evidently struck car number 2 from behind and caused car number 2 to collide headon with car number 3. The persons killed were in cars number 2 and number 3.

"The Audrain County coroner issued to the sheriff of said county, under section 58.260 of the statutes, six separate warrants (one for the body of each of said six persons who had died) requiring the sheriff to summon juries, each to be of six citizens of the county, to appear before the coroner, all at the same time and place, for inquests concerning said six dead bodies. The sheriff summoned as jurors the same six citizens under all of said six warrants. He made return of all six warrants as directed therein and as provided by section 58.270 of the statutes.

"When the coroner delivered said jury warrants to the sheriff he (the coroner) placed in the sheriff's hands also six separate subpoenas (one for each dead body) for witnesses to be summoned for said inquests. The names of the same group of witnesses were entered on all six of said subpoenas. The sheriff summoned said witnesses and made returns, accordingly, on all six of said subpoenas.

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"At the time appointed, the persons summoned as jurors and those summoned as witnesses appeared before the coroner.

"From that point to the end the coroner treated the proceedings as one inquest into the deaths of all of said six deceased persons. The six citizens summoned as jurors viewed the six bodies at one time and were sworn to inquire into all of the deaths, etc. One examination of the witnesses was made. The jury returned one verdict. It dealt with all six deaths.

"The sheriff claimed for each of the six warrants executed by him and for each of the six subpoenas served by him (as for six cases--he had to make written returns on each jury warrant and each subpoena) the modest fees allowed him for such services and, I believe, some mileage. The coroner questioned the propriety of the sheriff's claims and consulted the County Court (see 58.570 of the statutes). The County Court referred the coroner to me for an opinion. I do not find anything in our statutes or the Missouri court decisions that expressly answers the questions involved. Therefore, I request your opinions on the following questions."

and which asks four questions for our opinion, each of which will be considered in turn.

"Q. No. 1: The sheriff having received and executed six separate jury warrants as stated above and having received and served, and having made his returns on, six separate subpoenas for witnesses as stated above, should the coroner pay the sheriff his fees and mileage computed and claimed as for six inquests?"

In answer to your first question, we are enclosing herein an opinion rendered by this office on June 10, 1949, to the Honorable Ted A. Bollinger, Prosecuting Attorney of Shelby County, Missouri. This opinion holds on page four that "Although a coroner's inquest has been held not to be a part of a criminal prosecution, it has been held to be 'one step taken in the enforcement of the criminal laws of the land.'" This in effect holds that a coroner's inquest is a criminal and not a civil proceeding. Under this opinion, a sheriff who performs certain acts in connection with a coroner's

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inquest is to be allowed the fees provided by statute for his services in criminal cases. The fees allowed a sheriff for his services in criminal cases are set out in Section 57.290, Cum. Supp., 1957, as follows:

"1. 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:

For serving and returning each capias, for each defendant.....	\$1.00
For serving a writ of attachment for each person actually brought into court.....	1.00
For serving every writ of execution.	1.00
For entering return of non est on a capias or attachment.....	.50
For a return of nulla bona.....	.50
For summoning a jury to ascertain the sanity or pregnancy of a convict, drawing the inquisition, and returning the same.....	2.00
For summoning a grand jury.....	4.20
For summoning a petit jury and calling same at the trial.....	1.00
For executing a special venire when one shall have been actually ordered and issued.....	2.00
For summoning each witness.....	.50
For every return of non est on a subpoena.....	.25
For serving any rule of court or notice.....	.50
For calling each witness.....	.05
For taking recognizance.....	.50
For committing any person to jail...	1.00
For every trial in a criminal case or confession.....	1.00
For every trial in a capital case...	3.00"

As can be seen from reading the above statute, there is no provision therein specifically allowing the sheriff a fee for the summoning of a jury for a coroner's inquest. The general rule is

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that an officer is entitled to fees only when there is a clear statutory provision therefor. See *Nodaway County v. Kidder*, 344 Mo. 795, 129 S.W. (2d) 857. Applying this rule to Section 57.290, supra, it is our opinion that a sheriff who summons a jury for a coroner's inquest receives no fees for this service.

As to summoning witnesses, the statute provides for a fee of 50 cents to be allowed the sheriff for each witness summoned. As the provision of the statute allowing the sheriff a fee for summoning witnesses makes no differentiation between summoning witnesses in coroner's inquests and summoning witnesses in other criminal proceedings, it is our opinion that this fee would be allowed the sheriff for the summoning of witnesses in a coroner's inquest.

As to the mileage allowance a sheriff is to receive for travel in connection with a coroner's inquest, Section 57.300, RSMo 1949, provides the mileage allowances for sheriffs in criminal cases. This section provides as follows:

"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 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."

In our opinion to the Honorable Ted A. Bollinger, supra, the question was also raised as to the mileage allowance for sheriffs for travel in connection with a coroner's inquest. That opinion holds that the statute providing a mileage allowance for sheriffs refers to proceedings of court and that a coroner's inquest is not a court within the meaning of said statute. The opinion goes on to hold that a sheriff is not entitled to any mileage allowance for travel in connection with a coroner's inquest.

As to the fees allowed a sheriff for services rendered by him in connection with a coroner's inquest, Section 13 of Article VI of 1945 Constitution of Missouri provides as follows:

"All state and county officers, except constables and justices of the peace, charged

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with the investigation, arrest, prosecution, custody, care, feeding, commitment, or transportation of persons accused of or convicted of a criminal offense shall be compensated for their official services only by salaries, and any fees and charges collected by any such officers in such cases shall be paid into the general revenue fund entitled to receive the same, as provided by law. Any fees earned by any such officers in civil matters may be retained by them as provided by law."

"Q. No. 2: Although six jury warrants were issued as stated above, there having been but one inquest session and but one examination of the witnesses, and the inquest, as held, and the jury's verdict having been treated by the coroner as applying to all six of the dead bodies, are the members of the jury entitled to be paid as for having served at one inquest or six inquests?"

Section 494.170, RSMo 1957, provides in part as follows:

"1. Except as otherwise provided by law jurors shall be allowed fees for their services as follows:

(2) For each juror attending a coroner's inquest, day..... 3.00

"2. All fees allowed jurors as above shall be taxed as costs in the cases, respectively, in which they were summoned; but jurors serving in more than one case on the same day, at the same place, shall be allowed fees only in one case; and any juror, who claims fees for attending in two or more cases on the same day, at the same place, shall not be allowed fees for that day."

It is our opinion that the jurors attending the coroner's inquest referred to in your opinion request are to receive a fee of \$3.00 per day for every day they so attended said inquest. As is shown by the above statutory provision, the fee due a person who

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is summoned as a juror on a coroner's jury is based on the number of days he attends as a juror and is not based on the number of inquests he is summoned to attend or in fact does attend as a juror.

"Q. No. 3: Under the same circumstances as are stated in question 2 above, are the witnesses who appeared entitled to fees and mileage (if any) for attending one inquest or six inquests?"

Section 491.280, RSMo 1957, provides in part as follows:

"1. Witnesses shall be allowed fees for their services as follows:

- (1) For attending any court of record, reference, arbitrators, commissioner, clerk or coroner, at any inquest or inquiry of damages, within the county where the witness resides, each day, three dollars;
- (2) For like attendance out of the county where witness resides, each day, four dollars;
- (3) For traveling each mile in going to and returning from the place of trial, seven cents;
- (4) * * *; but witnesses attending in more than one case on the same day and at the same place shall only be allowed fees in one case; and any witness who shall claim fees for attendance in two or more cases on the same day and at the same place shall not be allowed any fees that day."

It is our opinion that the witnesses attending the coroner's inquest referred to in your opinion request are to receive a fee of \$3.00 per day for every day they so attended said inquest as witnesses if they live within Audrain County and a fee of \$4.00 per day if they reside outside Audrain County. As to mileage fees of the witnesses, said witnesses should be paid seven cents for every actual mile they traveled in going to and from the place of the inquest.

"Q. No. 4: Under the circumstances described above, would it have been proper for

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the coroner to have issued to the sheriff one jury warrant in which the names of all six dead persons were included, and, likewise, one subpoena for witnesses, with said subpoena made out to apply to inquiries into all six of the deaths?"

In answer to question number four, we are enclosing herein an opinion rendered by this office on March 6, 1953, to the Honorable Irvin D. Emerson, Assistant Prosecuting Attorney of Jefferson County, Missouri, which holds that the purpose of a coroner's inquest is to determine the cause of death of an individual or individuals and, if several deaths result from one calamity, then only one inquest should be held to determine the cause of death of all suffering death because of the calamity as the cause of death will be the same in each individual case. This opinion is further substantiated by Section 58.520, RSMo 1949, which reads in part as follows:

"Coroners shall be allowed fees for their services as follows, provided that when persons come to their death at the same time or by the same casualty, fees shall only be paid as for one examination: * * *."

CONCLUSION

It is the opinion of this office that a sheriff is not allowed a fee for summoning a jury in a coroner's inquest nor is a sheriff entitled to an allowance for mileage traveled in connection with a coroner's inquest.

It is the opinion of this office that a sheriff is to be allowed a fee of 50 cents for each witness summoned by him to attend a coroner's inquest. A sheriff is not entitled to retain these fees however.

It is also the opinion of this office that the jurors and witnesses summoned to attend the coroner's inquest should receive the statutory per diem fee regardless of the number of summonses they received to be present and sit as jurors or testify as witnesses.

It is also the opinion of this office that when multiple deaths result from one casualty, the coroner should conduct one inquest to inquire into the cause of death of all the persons who died as a result of said casualty.

Honorable Lon J. Levvis

The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard W. Dahms.

Yours very truly,

John M. Dalton
Attorney General

Enclosures