



STATE OF KANSAS

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June 5, 1979

ATTORNEY GENERAL OPINION NO. 79- 117

Sheriff Charles M. Light
Sheriff of Miami County
Paola, Kansas 66071

Re: Fees and Salaries -- Sheriffs -- Service of Out-of-State
Process

Synopsis: There is no statutory duty on the part of a sheriff to serve
out-of-state process; therefore, the provisions of K.S.A.
28-110 pertaining to sheriff's fees and the disposition
thereof is inapplicable.

* * *

Dear Sheriff Light:

In your letter you have requested our opinion concerning the allowable
fee for serving out-of-state process and the proper disposition of any
collected fee.

K.S.A. 28-110 provides in part:

"The sheriffs of the several counties in the state shall
charge for the services required by law to be performed
by them the following fees:

"Serving or executing and returning any writ,
process, order or notice, or tax warrant,
including a copy of the same, whenever a
copy is required by law, except as other-
wise hereinafter provided, for the first
person, one dollar \$1.00

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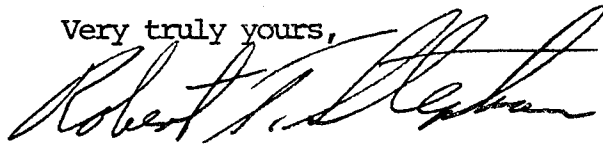
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"All fees provided herein, except such as are expressly given to the sheriff, are to be paid into the county general fund."

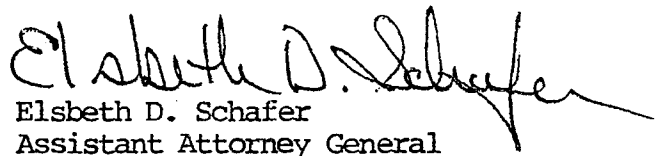
It can be seen by reading K.S.A. 28-110 that the statute speaks in terms of services that are required by law to be performed. We are unable to find any statutory provision that requires a sheriff to serve out-of-state process. It appears that sheriffs serve out-of-state process in a spirit of cooperation and comity, rather than by virtue of statutory requirement. Therefore, it is our opinion that the fee provisions of K.S.A. 28-110 are inapplicable to out-of-state process. It also should be noted that travel expense incurred in serving out-of-state process is not contracted pursuant to a statutory duty and, thus, is not subject to reimbursement.

Further, as to the correct disposition of fees collected for serving process from outside the state, it is our opinion that the provision in K.S.A. 28-110 requiring fees to be turned over to the county fund is inapplicable. Again, this is due to the fact that the fee is not collected pursuant to an official duty or obligation. However, it is our belief that the more appropriate disposition of the fee is to turn such fee over to the county treasurer for deposit in the county general fund pursuant to K.S.A. 28-175. While K.S.A. 28-175 does not directly encompass the factual situation you have presented, we believe its language is persuasive in regard to the proper disposition of out-of-state service fees.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Elsbeth D. Schafer
Assistant Attorney General

RTS:TDH:EDS:may