



STATE OF KANSAS

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May 2, 1986

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ATTORNEY GENERAL OPINION NO. 86- 63

Charles A. Peckham  
Rawlins County Attorney  
Rawlins County Courthouse  
Atwood, Kansas 67730

Re: Fees and Salaries -- Fees in All Counties and Salaries in Certain Counties -- Sheriff's Authority to Charge Additional Fees for In-State Service of Process

Synopsis: A sheriff is prohibited from charging to the district court mileage and other expenses for service of process within the state of Kansas, which are in addition to those amounts credited by the clerk of the district court to the county general fund from the docket fee. However, pursuant to K.S.A. 1985 Supp. 28-110, which sets forth a schedule of fees to be charged by the sheriffs of all counties for various services, a sheriff may charge and collect mileage and other fees in all the courts of limited jurisdiction in this state. Furthermore, under the authority of K.S.A. 60-2001 and K.S.A. 60-2003, a sheriff is authorized to charge as costs to the respective district court mileage and other allowable expenses for serving process from the courts of other states. Cited herein: K.S.A. 1985 Supp. 28-110; K.S.A. 60-201; 60-2001; 60-2003, 1975 Senate Bill No. 505; 1974 Senate Bill No. 941.

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Dear Mr. Peckham:

As Rawlins County Attorney, you request our opinion as to a sheriff's right to charge mileage and expenses for service of process pursuant to K.S.A. 1985 Supp. 28-110. The statute, which provides a list of permissible fees a sheriff may charge for various services, provides in part:

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

"For every mile actually and necessarily traveled each way in serving or endeavoring to serve any writ, process, order, venire or notice or tax warrant . . . . . .09"

While this statute allows a sheriff to charge a mileage fee of 9 cents per mile for serving warrants, etc., it appears to conflict with other statutes pertaining to allowable costs and fees. (See K.S.A. 60-2001; 60-2003.) Thus, you inquire: (1) if the sheriff can charge additional costs for service of process within the state of Kansas in addition to the docket fee, and (2) if so, the procedure for assessing these fees, and how they are to be collected and paid. You inform us that recently several sheriffs in your area have begun to charge for mileage and other costs, in addition to the amounts credited by the clerk of the respective district courts to the county general fund from the docket fee for the respective case.

Initially, we note the general rule of statutory construction followed by the Supreme Court of Kansas that it is the duty of the court, so far as practicable, to reconcile different statutory provisions so as to make them consistent, harmonious and sensible. N.E.A.-Wichita v. U.S.D. No. 259, 225 Kan. 395, 399 (1979). Accordingly, if there is any way to determine that the provisions of K.S.A. 1985 Supp. 28-110 do not conflict with other statutes, we will construe them in that manner.

In determining whether a sheriff can charge additional fees for service of process within the state, it is helpful to examine an earlier Attorney General Opinion, No. 74-245. That opinion pertained to numerous inquiries regarding the meaning and effect of Chapter 168 of the 1974 Session Laws of Kansas (Senate Bill No. 941). One of the specific questions raised in that opinion was whether sheriffs of the several counties could continue to charge the statutory fees for service of

process, and if so, in which courts. The opinion first concluded that 1974 Senate Bill No. 941 applied to the state's district courts only. That determination is significant in regard to this opinion, in that the senate bill amended K.S.A. 60-2001 and K.S.A. 60-2003, both of which potentially conflict with K.S.A. 1985 Supp. 28-110. 1974 Senate Bill No. 941 amended K.S.A. 60-2003 to read as follows:

"Items which may be included in the taxation of costs are:

. . . .

"(2) The mileage, fees, and other allowable expenses of the sheriff or other officer incurred in the service of process outside of this state or in effecting any of the provisional remedies authorized by this chapter."

Thus, the bill specifically amended the statute to provide that the sheriff could charge mileage and other expenses incurred in the service of process outside of the state. We feel it is significant that the amendment added the words "outside of this state." We infer from this addition that the Senate did not intend that the sheriff be allowed to charge as costs of the district court mileage and other expenses for service of process within the state.

1974 Senate Bill No. 941 amended K.S.A. 60-2001 by adding a paragraph pertaining to additional court costs, which reads as follows:

"(d) Additional court costs. Other fees and expenses to be assessed as additional court costs shall be approved by the court unless specifically fixed by statute. Such fees shall include, but not be limited to, witness fees, appraisers' fees, fees for service of process outside the state, fees for depositions, transcripts and publication, attorneys' fees, court costs from other courts and such other fees and expenses as may be required by statute. If directed by the court, the bar docket fee may be taxed as additional costs rather than included in the docket fee. All such additional court costs shall be taxed and billed against the parties as directed by the court. No

sheriff in this state shall charge any other court in this state a fee or mileage for serving any paper or process."

(Emphasis added.)

We note the amended language specifically provides that additional court costs shall include fees for service of process outside the state, but makes no mention of fees for in-state service of process. Furthermore, the amendment prohibits any sheriff in the state from charging another court in the state a fee or mileage for service of process. In our opinion, the newly amended statute was intended to prevent sheriffs from charging as district court costs mileage and other expenses for service of process within the state.

After determining that this bill applied exclusively to the state's district courts, Attorney General Opinion No.74-245 addressed the question of whether sheriffs could continue to charge the statutory fees for service of process, and if so, in which courts. The opinion found it significant that the legislature did not repeal the provisions of K.S.A. 28-110 (setting forth a schedule of fees to be charged by the sheriffs of all counties for various services) when it later enacted the civil procedure statutes dealing with court costs. Furthermore, the opinion noted that all of the amended sections were provisions of the Code of Civil Procedure, which "governs the procedure in the district courts of Kansas." K.S.A. 60-201. Taking these considerations into account, the opinion concluded that the language "no sheriff in this state shall charge any other court in this state a fee or mileage for serving any paper or process" (1974 Senate Bill No. 941) applies only to state district courts. The opinion noted it was inconsistent and unreasonable that a Chapter 60 provision, dealing with civil procedure in district courts, would have application to other courts in the state. Accordingly, the opinion concluded:

"[T]hat the sheriffs of the various counties of this state should continue to charge and collect mileage and other fees as set forth in K.S.A. 28-110 in all the courts of this state except the district courts."

This result was later confirmed by the Kansas legislature. In 1975, Senate Bill No. 505 amended K.S.A. 1974 Supp. 60-2001(d) to read:

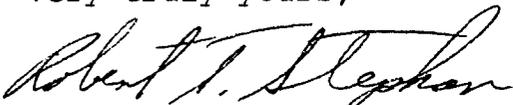
"No sheriff in this state shall charge any other district court in this state

a fee or mileage for serving any paper or process." (Underlined word new language.)

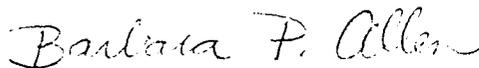
The amendment clearly indicates the legislature's intent that a sheriff may not charge mileage and other expenses to the district court for in-state service of process. We affirm the results of Attorney General Opinion No. 74-245, and conclude that the civil procedure statutes relating to costs apply only to mileage and fees in the various district courts of Kansas. Therefore, the provisions of K.S.A. 1985 Supp. 28-110, which outline a schedule of fees to be charged by the sheriffs for various services performed in counties, can only be construed to conflict with the civil procedure statutes at the district court level. Accordingly, a sheriff is free to charge all the courts except the district courts for service of process within the state, as well as charging for service of process outside of the state.

In summary, it is our opinion that a sheriff is prohibited from charging to the district court mileage and other expenses for service of process within the state of Kansas, which are in addition to those amounts credited by the clerk of the district court to the county general fund from the docket fee. However, pursuant to K.S.A. 1985 Supp. 28-110, which sets forth a schedule of fees to be charged by the sheriffs of all counties for various services, a sheriff may charge and collect mileage and other fees in all the courts of limited jurisdiction in this state. Furthermore, under the authority of K.S.A. 60-2001 and K.S.A. 60-2003, a sheriff is authorized to charge as costs to the respective district court mileage and other allowable expenses for serving process from the courts of other states.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Barbara P. Allen  
Assistant Attorney General