



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

June 30, 1975

ATTORNEY GENERAL OPINION NO. 75-268

Mr. George A. Palmer
Coffey County Probate Judge
Coffey County Courthouse
Burlington, Kansas 66839

Dear Judge Palmer:

K.S.A. 28-110 provides in pertinent 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 otherwise hereinafter provided, for the first person, one dollar \$1.00
Serving warrants and making return thereof, one dollar \$1.00

* * *

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

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

Your inquiry raises the following questions: (1) Whether a sheriff, in serving a summons or warrant as required by law, may charge a one dollar fee for each paper attached to the summons or warrant, in addition to the one dollar fee permitted for service of the summons (warrant) itself; (2) Whether a sheriff may now charge \$.13 per mile for his travels instead of the \$.09 charge specified by statute.

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In our opinion, this statute prevents a sheriff from exacting additional fees for service of papers attached to the warrant or summons. Any paper or document attached to the particular process and relating thereto must be deemed part of the process itself and not a separate item for which an additional fee may be charged. This view is reinforced by a reading of the statutory provisions following the specified fee schedule which generally evince an intent to eliminate unnecessary duplication in the charging of fees.

Additionally, you have inquired whether a sheriff may charge only \$.09 per mile under K.S.A. 28-110 for each mile actually and necessarily traveled in performing his prescribed duties thereunder or whether he may now assess the \$.13 rate authorized by K.S.A. 75-3203 et seq. and established by K.A.R. 81-18-1. Although the mileage rate provision of K.S.A. 28-110 itself is abundantly clear, it remains to be determined whether K.S.A. 1974 Supp. 75-3203 should be deemed to have amended this portion of the statute. Section 75-3203 provides in pertinent part:

"Wherever in the statutes of the state of Kansas any mileage is allowed to any public official of the state or any of the municipal subdivisions thereof, or to witnesses, jurors or other persons, the rate thereof, shall be in the amount fixed and established by the secretary of administration for each mile actually and necessarily traveled, via the most direct route by privately owned conveyance for official purposes, and wherever in any statute a rate higher or lower than the amount so fixed per mile is now fixed, the same shall be reduced or increased to the amount fixed per mile as herein provided for, and no mileage in excess of such amount for each mile actually and necessarily traveled, regardless of the number of passengers, shall be paid or taxed as costs in any case."

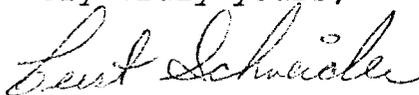
After having reviewed the language of this statute, it is our opinion that it does not effect a modification of K.S.A. 28-110 and that accordingly, a sheriff may collect only the \$.09 rate specifically provided therein. We reach this conclusion since K.S.A. 75-3203 only provides compensation and reimbursement to public officials for personal travel expenditures incurred

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by them during official travel in a privately owned vehicle. In contrast, however, the mileage rate specified in K.S.A. 28-110 does not inure to the personal benefit of the sheriff but rather is in the form of a fee to be assessed and collected by him for the purpose of reimbursing the county treasury for expenses incurred by him during official travel in a county vehicle. It is readily apparent that the two statutes are generically dissimilar and therefore, the provisions of K.S.A. 75-3203 should not be construed to affect K.S.A. 28-110.

In summation, therefore, it is the opinion of our office that a sheriff may not charge additional sums for documents appended and related to a service of process and that he may charge only \$.09 per mile for expenses incurred in performing his prescribed duties under K.S.A. 28-110.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

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