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1. SHERIFF—TAKING PRISONER BEFORE COURT FROM COUNTY JAIL OR FROM JAIL IN ADJOINING COUNTY—ENTITLED ONLY TO FEE PRESCRIBED—SECTION 2845 G. C.
2. INDICTMENTS—SEVERAL SERVED UPON DIFFERENT PERSONS AT ONE PLACE—SHERIFF ENTITLED TO FEE AND MILEAGE FOR EACH INDICTMENT SERVED—SECTION 2845 G. C.

SYLLABUS:

1. A sheriff is entitled only to the fee prescribed therefor by Section 2845 of the General Code for the taking of a prisoner before the court regardless of whether the prisoner is brought from the county jail or from a jail in an adjoining county.

2. In serving several indictments upon different persons located at one place, the sheriff is entitled to his fee and mileage as established by Section 2845, General Code, for each indictment served.

Columbus, Ohio, November 19, 1943.

Hon. Frank W. Springer, Prosecuting Attorney,  
Lisbon, Ohio.

Dear Sir:

This will acknowledge your recent communication which recites the following facts:

The county of Columbiana has no jail, and all persons committed to jail in that county are confined in the Mahoning County jail at Youngstown. Based upon those facts you present for my opinion the following questions:

“1. Is the County Sheriff entitled to assess mileage for two trips in bringing a defendant before the Court where such trips are necessary because of the fact that the county jail is located in an adjoining county?”

2. Should the County Sheriff assess mileage for each defendant in serving indictments on the defendants, where the prisoners are kept in a jail in an adjoining county, or shall the mileage be apportioned among the number of defendants served?”

As you have noticed in your letter, prisoners may be kept in a county other than that of the commitment by virtue of Section 3170, General Code, which provides:

“In a county not having a sufficient jail, or when the jail is in danger of being broken into by a mob, the sheriff shall convey any person charged with the commission of an offense or sentenced to imprisonment in the county jail, or in custody upon civil process, to the jail of any county which he may deem most convenient and secure. Such officer may call such aid as is necessary in guarding, transporting or returning such person. Whoever neglects or refuses to render such aid, when so called upon, shall forfeit and pay the sum of ten dollars, to be recovered by an action in the name and for the use of the county. Such officer and his assistants shall receive such compensation for their services as the auditor of the county from which such person was removed deems reasonable, payable from the county treasury on the warrant of the auditor.”

The return of such prisoners to the place of trial or before a judge or court is had by compliance with Section 3174, General Code, which is as follows:

"The prosecuting attorney of the county from which a person charged with the commission of an offense has been removed for safekeeping may file with the clerk of the court thereof, a precept directing that a warrant be issued to the sheriff having the custody of such person, commanding him to deliver the prisoner to the sheriff of the county from which the prisoner was removed, or to the sheriff of the county where the trial is to take place, upon change of venue."

Section 2845, General Code, is the comprehensive statement of fees to which a sheriff is entitled upon his performance of the various duties which the law imposes upon him. Following is that section:

"For the services hereinafter specified when rendered, the sheriff shall charge the following fees, and no more, which the court or clerk thereof shall tax in the bill of costs against the judgment debtor or those legally liable therefor: For the service and return of the following writs and orders, namely: Execution when money is made without levy or when no property is found, seventy-five cents; when levy is made on real property, for the first tract, two dollars and fifty cents, and for each additional tract fifty cents; when levy is made on goods and chattels, including inventory, two dollars and fifty cents; writ of attachment of property, except for purpose of garnishment, two dollars and fifty cents; writ of attachment for the purpose of garnishment, seventy-five cents; writ of replevin, two dollars and fifty cents; warrant to arrest, each person named in the writ, one dollar; attachment for contempt, each person named in the writ, seventy-five cents; writ of possession or restitution, two dollars and fifty cents; subpoena, each person named in the writ, twenty-five cents; venire, each person named in the writ, twenty-five cents; summoning each juror, other than on venire, ten cents; writ of partition, one dollar and fifty cents; order of sale on partition, for the first tract, two dollars and fifty cents, and for each additional tract fifty cents; other order of sale of real property, for the first tract, two dollars and fifty cents, and for each additional tract, fifty cents; administering oath to appraisers, forty cents each; for furnishing copies for advertisements, ten cents the hundred words; copy of indictment, each defendant, fifty cents; all summons, writs, orders or notices, for the first name, seventy-five cents, and for each additional name, twenty-five cents; *in addition to the fee for service and return the sheriff shall be authorized to charge on each summons, writ, order or notice, except as otherwise specifically provided by law, a fee of eight cents per mile, going and returning*, provided, that where more than one person is named in such writ, mileage shall be charged for the shortest distance necessary to be traveled; taking bail bond, twenty-five cents; jail fees, as follows: For receiving a prisoner, fifty cents, and for discharging or surrendering a prisoner, fifty cents, to be charged but once in each case, taking a prisoner before a judge or court per day, seventy-five cents; calling action, ten cents; calling jury, ten

cents; calling each witness, five cents; bringing prisoner before court on habeas corpus, one dollar. \* \* \*” (Emphasis mine.)

While the language above does authorize the payment to the sheriff of certain fees for the serving or execution of the enumerated instruments, and while it does, by the language which I have emphasized, incidental thereto, allow a mileage fee to the sheriff for the serving or execution of the instruments, it seems to me, however, not to apply to the return of a prisoner to the court for trial or otherwise, for the reason that language subsequent to the emphasized language in Section 2845 is as follows:

“\* \* \* taking a prisoner before a judge or court, per day, seventy-five cents; \* \* \*”

I believe that by stating a specific fee in specific language relating to bringing a prisoner before the court, the statute impliedly says that the general language relating to mileage upon the service of the instruments enumerated, has no application. The introductory words of Section 2845 “For the services hereinafter specified when rendered, the sheriff shall charge the following fees, and no more”, seem, moreover, to confirm such opinion. In other words, since the legislature has stated a specific sum for the sheriff in bringing a prisoner before the court or a judge, that, and no more, in accordance with the above words, may be charged by the sheriff. It might further be pointed out that when the sheriff returns a prisoner to the court he is not executing any instrument in the nature of a “summons, writ, order or notice.” If the words of Section 3174, above quoted, be examined it will be seen that the only order issued to effect the return of the prisoner is directed to the sheriff of the county to which the prisoner is taken for safe-keeping, and not to the sheriff of the county committing such person.

From the above, I conclude, and it is my opinion, that where a sheriff in a county having no jail, but which confines prisoners in the jail of another county, brings a prisoner before the court or a judge, which prisoner was confined in the jail of the other county, such sheriff may charge only the fee mentioned in Section 2845 for “taking a prisoner before a judge or court.”

Section 2845 likewise is dispositive of your second question. It may first be noticed that the serving of an indictment is the serving of one of those instruments specifically mentioned in Section 2845 in which a fee may be claimed by the sheriff, and it follows on which service the sheriff may receive the mileage fee. The specific language of Section 2845 regarding the mileage to be paid to the sheriff upon the service of indictments and other instruments is as follows:

“\* \* \* in addition to the fee for service and return the sheriff shall be authorized to charge on *each* summons, writ, order or notice, except as otherwise specifically provided by law, a fee of eight cents per mile going and returning \* \* \*.”

I have emphasized the use of the word “each” in the portion of the statute quoted, and I believe that the use of the word, of itself, resolves your question and makes the meaning of the statute clear, and therefore not a proper subject for construction.

In my opinion the statute clearly states that on each indictment served the sheriff is entitled to the mileage. It certainly in no way changes the meaning of those words that purely extraneous circumstances cause it to be that the sheriff often in serving several indictments goes to the same place to make service. The well understood rule that where the words of a statute are clear, they may not be examined to find a meaning not present in them, is of forceful application here. See 37 O. Jur. 614, et seq.

In my opinion the only conclusion to be taken from the language of the statute is that where a sheriff serves several indictments upon persons located at one place, he is entitled to the statutory fee and mileage on each indictment so served. A like result was reached in an opinion found in Opinions of the Attorney General for 1931, Vol. I, page 469, upon the same question as it relates to separate witnesses subpoenaed. The syllabus of that opinion is as follows :

“Under the provisions of Section 2845, General Code, a sheriff in serving witnesses not named in the same writ, should charge as costs mileage from the court house to where each witness is found and return.”

Stating my opinion specifically, you are advised that a sheriff is entitled only to the fee prescribed therefor by Section 2845 of the General Code for the taking of a prisoner before the court regardless of whether the prisoner is brought from the county jail or from a jail in an adjoining county; and in serving several indictments upon different persons located at one place, the sheriff is entitled to his fee and mileage as established by Section 2845, General Code, for each indictment served.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.