

SUPREME COURT: Marshal of Supreme Court not entitled to retain fees  
FEES: for service of process under Supreme Court Rule  
No. 5.04.

FILED

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Mr. Roy Cherry  
Marshal of the Supreme Court of Missouri  
Jefferson City, Missouri

Dear Mr. Cherry:

This is in reply to your letter of recent date, requesting an opinion from this department, which reads as follows:

"Section 2050, Art. II, Chap. 10, R. S. Mo. 1939, as amended by the General Assembly in 1945, relating to the compensation and expenses of the marshal of the Supreme Court, reads in part as follows:

'All fees received by the marshal for services rendered as such marshal shall be paid into the state treasury for the benefit of the General Revenue fund, said marshal to submit to the state auditor at the end of each year a sworn statement of all fees received by him in his capacity as such marshal and that he has not retained for his own use any such fees.'

"I have recently served a number of subpoenas for the Missouri Bar Administration and have collected the fees and mileage as provided by law. I would like to have your opinion as to whether these fees and mileage should be paid into the state treasury and I file an expense account for such expenses as I incurred in serving these subpoenas, or whether I should retain such fees and mileage for my own use."

Section 2050, R. S. Mo. 1939, as reenacted, Laws 1945, page 823, provides for the compensation to be received by the marshal of the Supreme Court, discloses how the same is to be paid and what disposition is to be made of fees collected for services rendered as such marshal. We quote the section in its entirety

as follows:

"The marshal of the Supreme Court shall receive as compensation for his services as such marshal four thousand five hundred dollars (\$4,500.00) per annum, to be payable in monthly installments, and shall also be entitled to receive his actual expenses of travel and his necessary expenses for subsistence when travelling on his duties as such marshal at the direction of the Court or the Chief Justice thereof, and if such travel includes the transportation of prisoners, he shall also be paid any additional actual expenses of the travel of said prisoner or prisoners and their necessary expenses for subsistence. The said Court or Chief Justice thereof may authorize the marshal to employ a guard at a compensation not in excess of four dollars (\$4.00) per day and the marshal shall be entitled to receive any additional expense of travel of said guard and his necessary expenses for subsistence. Such salary and expenses of the marshal, including the expense of the prisoners and guard, and such compensation of the guard, shall be paid from the State Treasury on requisition of the Chief Justice certified to the State Auditor. All fees received by the marshal for services rendered as such marshal shall be paid into the State Treasury for the benefit of the General Revenue Fund, said marshal to submit to the State Auditor at the end of each year a sworn statement of all fees received by him in his capacity as such marshal and that he has not retained for his own use any such fees." (Underscoring ours.)

Prior to reenactment in 1945, of the above statute, the marshal of the Supreme Court of Missouri received as compensation for his services a fixed sum of \$2500.00 per annum, plus fees collected in an amount not to exceed \$500.00 per annum. All fees collected per annum over and above the \$500.00 retained by the marshal were to be paid into the state treasury for the benefit of the revenue fund. The statute as it now stands provides for compensation to the marshal for his services as such marshal of a fixed sum of \$4500.00 per annum plus actual expenses of travel and his necessary expenses for subsistence when traveling on his duties as such marshal at the direction of the Court or the Chief Justice thereof, and if such travel includes the transportation



of prisoners he shall also be paid any additional actual expenses of the travel of said prisoner or prisoners and their necessary expenses for subsistence. The present statute contains the same directive to the marshal, as before its reenactment, relative to reporting and accounting for fees collected but not to be retained by him.

The sole question to be determined under the inquiry is whether or not you are to pay into the state treasury the fees you collect and receive for serving process described in Supreme Court Rule No. 5.04, which rule provides:

"Upon application under the provisions of Section 5.03 of this rule, the Clerk of this Court shall issue writs of subpoena, including subpoena duces tecum and dedimus to take depositions. The Committees are empowered to take and transcribe the evidence of witnesses who shall be sworn by any member thereof, and the Committee shall report to this Court the failure of any person to attend and testify in response to any subpoena issued as herein provided."

The Supreme Court of Missouri, in its Rule No. 5.03 refers to "compulsory process" as outlined in the above quoted Rule No. 5.04. The quoted rule provides that the clerk of the Supreme Court shall issue the three types of process described therein upon proper application being made therefor. Applications for such process are made by Circuit Bar Committees and the Advisory Committee when carrying out their duties under Supreme Court Rule No. 5. While discussing the process described in Supreme Court Rule No. 5.04, it becomes of importance in this instance to note the provision contained in such rule providing that "\* \* \*the committee shall report to this court the failure of any person to attend and testify in response to a subpoena issued as herein provided." The subpoenas you have served have been placed in your hands for proper service pursuant to authority contained in Supreme Court Rule No. 5.04. As a ministerial office of the Court you have served the process and collected the service fees provided by law for service of like process. Your inquiry does not disclose any contention on your part that such service of process is not an act done as marshal of the Court. The type of process being considered, the source from which it emanates, and the supervision over such process by the Supreme Court as disclosed in its Rule No. 5.04, rules against any possible contention that your service in this regard has not been rendered as marshal of the Supreme Court.

In this state we continue to follow the rule stated in State of Missouri ex rel. Huebler v. Board of Police Commissioners, 82 S. W. 960, 108 Mo. App. 98, l.c. 104, which is recorded as follows:

"\* \* \*an officer of the court claiming fees for services must be able to put his finger on some statute expressly allowing the fee he claims, and if he is unable to do so he is not entitled to the fees \* \* \*, and it is also true that statutes regulating costs should be strictly construed \* \* \*."

Section 2050, R. S. Mo. 1939, reenacted Laws 1945, page 823, does not contain any provision expressly permitting the marshal of the Supreme Court to retain any fees collected by him as such marshal. This being true, he must follow the mandate of the statute and pay into the state treasury all such fees. His actual expenses incurred in the service of process we have discussed herein should be reimbursed to him in the manner set forth in the statute. We are not without knowledge of the fact, disclosed by our investigation, that the state treasury of Missouri has its income from this particular source enhanced by about two-thirds of the amount collected for serving this process, and at the expense of the Missouri Bar Fund. However, we feel that such situation can only be met by legislative action or by amendment of Supreme Court rules touching this subject.

#### CONCLUSION

It is the opinion of this department that the marshal of the Supreme Court of Missouri is not permitted to retain for his own use fees charged and collected for serving process described in Supreme Court Rule No. 5.04, but that such fees must be paid into the state treasury in the manner set forth in Section 2050, R. S. Mo. 1939, as reenacted Laws 1945, page 823, and his actual expense incurred performing such duties is to be reported and reimbursed to him as provided in said section.

Respectfully submitted,

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APPROVED:

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