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Letter Opinion No. 62-93-L
R-352

REQUESTED BY: The Honorable Lloyd C. Helm
Cochise County Attorney

OPINION BY: Robert W. Pickrell
The Attorney General

QUESTION: Does A.R.S. §11-445, as amended,
provide that the Sheriff's fees
for service of civil process shall be
determined by the actual miles
traveled?

CONCLUSION: No.

This question has arisen as a result of the long standing practice of some sheriffs who mail civil process papers from the County Court House to a Deputy Sheriff in another town within the same county. Prior to the amendment of A.R.S. §11-445, these Sheriffs charged a fee based upon the miles actually traveled by the Deputy Sheriff in serving such papers.

As a general rule, fees charged for service of civil process are based upon the miles actually traveled. 47 Am. Jur. 889, 80 C.J.S. 540, 541, 542, 57 C.J.S. 1129. A.R.S. §11-445 (B), prior to being amended, was consistent with this general rule and reads as follows:

"§11-445. Fees chargeable by sheriff; fees for service of process by sheriff or constable

. . .

B. For traveling to serve civil process, the sheriff and the constable shall receive thirty cents for each mile actually and necessarily traveled, which shall be charged one way only. If two or more persons are named in the same writ he shall charge for the distance actually and necessarily traveled in serving the writ."

As amended, A.R.S. §11-445 (B) reads as follows:

"§11-445. Fees chargeable in civil actions by sheriffs, constables and private process servers; authority of private process servers

. . .

B. For traveling to serve civil process, writs, orders, pleadings or papers, the sheriff shall receive thirty-five cents for each mile from the county court house of the county in which service is made to the place of service, but, in any event, not to exceed thirty-five miles, nor to be less than one dollar. Mileage shall be charged one way only. For service made at the same time and place, regardless of the number of parties or the number of papers so served, only one charge for travel shall be made for such service."

The amended statute clearly provides that the fee paid to the Sheriff for traveling to serve civil process shall be determined by the distance from the county court house to the place of service.

The amended statute does not contain an implied requirement that this distance be actually traveled, but, to the contrary, the distance actually traveled is no longer material. Not only did the legislature remove the requirement that the Sheriff's fee be based upon the distance actually traveled to serve process, but it expressly provided in the amended statute that the minimum fee for this service shall be \$1.00 and the maximum fee shall be \$12.25, regardless of the distance actually traveled.

It has been suggested by a number of people that the statute as amended establishes an unreasonable fee in those cases where the distance from the court house to the place of service is not actually traveled. In reply, it should be noted that the new method established by A.R.S. §11-445 (B) as amended, reduces the fee to be charged by the Sheriff in all those cases where the distance actually traveled from the court house to the place of service exceeds 35 miles. This office is not vested with the power to question the wisdom of the legislature. The legislature has exercised its unquestioned power to set forth a method for determining the fees to be charged by a public officer.

Robert W. Pickrell
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The Attorney General