

3027

SHERIFF; FEES, SERVICE AND RETURN OF WARRANTS OF ARREST—§311.17 (A)(5)—NO MILEAGE FEES; TRAVELING TO AND FROM TRAFFIC ARREST—§311.17 (B)(1).

SYLLABUS:

1. A sheriff is entitled to the fee provided for in Section 311.17 (A) (5), Revised Code, for the service and return of warrants of arrest without regard to the amount of time or expense to be expended in serving such writ.

2. A sheriff is not entitled to mileage fees as provided in Section 311.17 (B) (1), Revised Code, when going to and returning from the scene of a traffic arrest.

Columbus, Ohio, November 6, 1958

Hon. Robert E. Cook, Prosecuting Attorney
Portage County, Ravenna, Ohio

Dear Sir:

I have your request for my opinion reading:

“The following question has arisen in our county concerning the collection of costs by the sheriff.

“When a deputy sheriff makes an arrest for a witnessed traffic violation and confines the offender without warrant (issuing comply with 4549.17 of the Revised Code) and thereafter files an affidavit and obtains a warrant solely for the purpose of regularizing detention until the next session of court, is the sheriff authorized to tax costs

“(A) For the serving of the warrant

“(B) For mileage from the county seat to the scene of the arrest and return, as set forth in R.C. 311.17 (A-5) and (B-1).”

I invite your attention initially to my opinion of April 18, 1958, construing Section 4549.17, Revised Code, being Opinion No. 1976, Opinions of the Attorney General for 1958, p. 234, the sixth paragraph of the syllabus reads in pertinent part :

“6. A summary of the procedures to be observed under the provisions of Section 4549.17, *supra*, is as follows :

“A. Section 4549.17, Revised Code, provides for the release, with or without bail of persons accused of violating the traffic laws which violations amount to misdemeanors, of both residents and non-residents of this state.

“B. A resident of Ohio, arrested for any such traffic misdemeanor, should be :

“(1) taken before a magistrate having jurisdiction for an immediate hearing.

“(2) if no hearing can be had admitted to bail by such magistrate, who shall then designate a time for hearing.

“(3) if no judicial officer (magistrate) is accessible, released by the arresting officer upon giving his name and address, the arresting officer naming the magistrate, time, place, and date of hearing.”

“C. A non-resident of Ohio, arrested for any such traffic misdemeanor, should be :

“(1) taken before a magistrate having jurisdiction for an immediate hearing.

“(2) if no hearing can be had, admitted to bail by such magistrate, who shall then designate a time for hearing.

“(3) if no judicial officer (magistrate) is accessible, released upon giving bail in amount fixed by the arresting officer, or depositing the motor vehicle, the arresting officer then designating the magistrate, time place and date of hearing.

“(4) if no judicial officer (magistrate) is accessible, and if the accused cannot give bail in the amount fixed by the arresting officer and does not leave the motor vehicle in lieu of bail, taken before a clerk or deputy clerk of a court of record to fix bail.

“(5) if no judicial officer (magistrate) is accessible, and if the accused cannot furnish the bail fixed by the arresting officer and does not leave the

motor vehicle in lieu of bail and if the accused cannot furnish the bail fixed by the clerk or deputy clerk of a court of record, confined until he can be taken before a court or magistrate as provided in Section 2935.05, Revised Code.”

As stated in Opinion No. 1976, *supra*, a sheriff is not authorized to detain the accused unless the statutes so provide.

Assuming, then, for the purpose of your inquiry that an arrest is made for an offense not included within the specific provisions of Section 4549.17, Revised Code, the provisions of Chapter 2935., Revised Code, apply, Section 2935.03, Revised Code, providing :

“A sheriff, deputy sheriff, marshal, deputy marshal, watchman, or police officer shall arrest and detain a person found violating a law of this state, or an ordinance of a municipal corporation, until a warrant can be obtained.

“A constable within the limits of the township in which said constable has been appointed or elected, shall arrest and detain a person found by him in the commission of a misdemeanor, either in violation of a law of this state or an ordinance of a village, until a warrant can be obtained.”

Section 2935.05, Revised Code, further provides :

“When a sheriff, deputy sheriff, marshal, deputy marshal, watchman, or police officer has arrested a person without a warrant, he must, without unnecessary delay, take the person arrested before a court or magistrate having jurisdiction of the offense, and must make or cause to be made before such court or magistrate a complaint stating the offense for which the person was arrested.”

Section 2935.11, Revised Code, provides for the issuance of a warrant :

“When an affidavit charging a person with the commission of an offense is filed with a judge, clerk, or magistrate, if he has reasonable ground to believe that the offense charged has been committed, he shall issue a warrant for the arrest of the accused.

“If the offense charged is a violation of the laws of this state, such warrant may be directed to and executed by any officer named in section 2935.03 of the Revised Code. If the offense charged is a violation of the ordinance or regulation of a municipal corporation, such process shall be directed to and executed by the officers of such municipal corporation.”

Where a warrant is issued in such a case the warrant must be served and the return made regardless of the fact that very little time or expense may be involved. Section 311.17, Revised Code, to which you make reference provides in pertinent part:

“For the services specified in this section, the sheriff shall charge the following fees, which the court or clerk thereof shall tax in the bill of costs against the judgment debtor or those legally liable therefor:

“(A) For the the service and return of the following writs and orders:

“* * *

“(5) Warrant to arrest, each person named in the writ, one dollar;

“* * *

“(B) In addition to the fee for service and return the sheriff may charge:

“(1) On each summons, writ, order, or notice, 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; * * *”

The language of Section 311.17, *supra*, is quite clear and contains no provision for the omission of a fee when little or no effort is required to serve the writ. The sheriff must serve the writ upon the accused and is required to make the return; the performance of which entitles him to the fee.

The question of mileage presents a separate problem for consideration. As I interpret Division (B) (1) of Section 311.17, *supra*, mileage is allowed for travel required for serving summons, writs, orders or notices. When a deputy sheriff is called to the scene of an accident or other disturbance, *he is not traveling for the purpose of serving a warrant of arrest*. Such travel would be the normal travel expense of the office of sheriff made necessary by the performance of the duty to apprehend and bring to justice those who violate the law.

In the normal situation where a deputy sheriff is called to the scene of an accident or a traffic law violation or apprehends a motorist violating a traffic law, Section 4549.17, Revised Code, will apply and the issuance of a warrant to arrest will be unnecessary. However, when the deputy

sheriff makes an arrest and Section 4549.17, Revised Code, does not apply such deputy is required by Section 2935.03, *supra*, to detain the accused until a warrant can be issued. In such a case the accused will be in the custody of the deputy or the sheriff and will not be necessary to incur travel expense to serve the warrant. The fifth paragraph of the syllabus of Opinion No. 1976, *supra*, reads :

“5. A sheriff or jailer is authorized to confine an accused in jail for a violation of the motor vehicle laws only (1) upon the receipt of a commitment issued under the authority of Section 2937.32, Revised Code, or (2) upon an arrest without a warrant, *unless the provisions of Section 4549.17, Revised Code, apply*, until such time as the accused can be brought before a judge or magistrate as provided in Section 2935.05, Revised Code.”

When Section 4549.17, Revised Code, applies and the accused has been informed when to appear before a magistrate for a hearing and the accused fails to appear, a warrant for his arrest may be issued. When serving a warrant in such a situation the sheriff is clearly entitled to mileage. However, I can not interpret Section 311.17, *supra*, so as to allow the sheriff to receive mileage for traveling to the scene of an accident or violation. Section 311.17, *supra*, provides for mileage when traveling to serve the legal papers therein enumerated.

Therefore, it is my opinion and you are accordingly advised that :

1. A sheriff is entitled to the fee provided for in Section 311.17 (A) (5), Revised Code, for the service and return of warrants of arrest without regard to the amount of time or expense to be expended in serving such writ.

2. A sheriff is not entitled to mileage fees as provided in Section 311.17 (B) (1), Revised Code, when going to and returning from the scene of a traffic arrest.

Respectfully,
WILLIAM SAXBE
Attorney General