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1. ARREST—CHIEF PROBATION OFFICER—ISSUED WRITTEN ORDER TO SHERIFF TO ARREST PROBATIONER—MANDATORY DUTY OF SHERIFF TO EFFECT ARREST—SECTION 13452-6 G. C.
2. SHERIFF WHO EFFECTS SUCH ARREST MAY CHARGE FEE OF \$1.00 AND MILEAGE—SECTION 2845 G. C.

SYLLABUS:

1. Where the chief probation officer, acting pursuant to Section 13452-6, General Code, issues a written order to the sheriff for the arrest of a probationer, it is the mandatory duty of the sheriff to effect such arrest.

2. The sheriff who effects an arrest pursuant to a written order by the chief probation officer, may charge a fee of \$1.00 and mileage as provided in Section 2845, General Code.

Columbus, Ohio, July 23, 1951

Hon. Joel S. Rhinefort, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“Lucas County has recently established a County Probation Department and the chief probation officer has executed written orders for the arrest of probationers and delivered the orders for service to the sheriff of Lucas County under the provisions of General Code 13452-6.

“The sheriff has refused to make the arrests specified in the orders unless some provision is made for the payment of his costs. The clerk of courts has expressed doubt as to his authority to tax fees for this service in the costs without some record on the court docket indicating the issuance of such orders.

“We would appreciate your opinion on the following:

“1. Is it the mandatory duty of the sheriff to arrest probationers on the written orders of the chief probation officer?

“2. If the answer to the first question is in the affirmative or if the sheriff voluntarily complies, may fees for this service be charged by the sheriff and taxed in the costs of the case?”

In answer to your first question, reference must be had to Section 13452-6, General Code, which reads as follows:

“During such probationary period, any field officer or probation officer, may arrest the defendant without a warrant and bring him before the judge or magistrate before whom the cause was pending. Such arrest may also be made by any sheriff or other peace officer upon the written order of the chief probation officer, if the defendant be under the supervision of a county probation department, or on the warrant of the judge or magistrate, or on the order of an officer of the state department of public welfare, if the defendant be under its supervision.”

Section 2833, General Code, relating to the duties of sheriffs is in part as follows:

“Each sheriff shall preserve the public peace and cause all persons guilty of breach thereof, within his knowledge or view, to enter into recognizance with sureties to keep the peace and to appear at the succeeding term of the common pleas court of the proper county and commit them to jail in case of refusal. He shall return a transcript of all his proceedings with the recognizance so taken to such court and shall execute all warrants, writs and other process to him directed by proper and lawful authority. He shall attend upon the common pleas court and the court of appeals during their sessions, and, when required, upon the probate court. * * *”

Section 2834, General Code, provides:

“The sheriff shall execute every summons, order or other process, make return thereof as required by law and exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law.”

The above provisions allow the chief probation officer or a field officer to arrest a probationer without a warrant. The Legislature, through the statutes, has given to the chief probation officer a discretionary power as to whether he will effect the arrest or will request the sheriff for his help. A reading of these two statutes, and especially Section 2834, which makes it the duty of the sheriff to carry out all orders lawfully given to him, would seem to indicate that the sheriff, upon receipt of the written order by the chief probation officer, is under a mandatory duty to effect the arrest of the probationer.

Your second question raises a question as to what fees may be charged

by the sheriff when effecting this arrest. Reference must be had to Section 2845, General Code, which reads in part as follows:

“For 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: * * * 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, * * *.”

From the reading of this statute, it appears to me quite clearly the intention of the Legislature that the sheriff may charge a mileage fee for the necessary travel that he makes in effecting this arrest.

When we come to the question of fees, a perusal of the complete statute shows that there is no specific provision for a fee for making an arrest upon the written order of the chief probation officer. The closest provision is the one which allows the sheriff to charge \$1.00 in executing a warrant to arrest. Since I have already held above that the sheriff is under a mandatory duty to arrest upon the written order of a probation officer, it follows that this order is akin to a warrant, and it seems to me to be the clear intention of the law that the sheriff is to be paid a fee when he is required to perform certain duties.

Accordingly, it is my opinion that the sheriff, when arresting upon a written order of the probation officer, may charge the \$1.00 provided in Section 2845, General Code, for an arrest with a warrant.

Therefore, in specific answer to your questions, it is my opinion that:

1. When the chief probation officer, acting pursuant to Section 13452-6, General Code, issues a written order to the sheriff for the arrest of a probationer, it is the mandatory duty of the sheriff to effect such arrest.
2. The sheriff who effects an arrest pursuant to a written order by the chief probation officer, may charge a fee of \$1.00 and mileage as provided in Section 2845, General Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General