

HABEAS CORPUS PROCEEDINGS, PAYMENT OF COSTS.

Tallahassee, Fla., June 20, 1917.

Dear Sir:

Your letter of the 5th instant duly received, as follows:

"As attorney for the Board of County Commissioners of Columbia County and at the Commissioners' request I write to get your opinion on the following:

"Three members of the board were taken to Tallahassee in custody of the Sheriff to appear before the Supreme Court in Habeas Corpus Proceedings, where they were released from custody and the sentence imposed by the Circuit Judge for contempt of Court vacated.

"The Sheriff now brings in a bill for mileage for himself and three prisoners for ten cents a mile each way.

"We would like to know whether the sheriff should charge mileage for more than one prisoner and actual railroad fare and expenses for the others, or whether he should have mileage for all three and himself to Tallahassee and back, or whether there should be any mileage charged for the Commissioners returning, they having been discharged in Tallahassee."

Replying to above will state that Section 2254 of the General Statutes covers the matter as to cost in habeas corpus cases. It provides that the court, justice or judge before whom the prisoner is brought shall inquire into the cause of his imprisonment and shall either discharge him or remand him to custody and shall "either award against the prisoner the charge of his transportation, not exceeding 15 cents per mile, and the costs of the proceedings, or shall award the costs in his favor, or shall award no costs or charges against either party, as shall seem right."

By referring to the order discharging the petitioners in this case, I find that the Supreme Court adjudged that the County of Columbia should pay the cost in the Supreme Court, which amounts to \$12. However, the order did not mention the Sheriff's cost nor, in fact, any other cost in the proceedings. In other words, the Supreme Court awarded no costs or charges against either party except as above stated.

County Commissioners, as you know, are clothed with a wide discretion in auditing and approving bills of costs against the county. This is especially emphasized by Sections 4064, 4066 and 792 of the General Statutes. They in substance provide that the Board of County Commissioners before approving any bill against the county shall ascertain that no charge for anything except "actual and necessary services or actual and necessary expenses which may be chargeable against the state or county is contained therein."

In this connection will state that it is very unusual for petitioners in habeas corpus cases to be physically produced before the Supreme Court, as the same is waivable without objections. In other words, as a matter of practice, it is unnecessary for them to be present, and this would seem to apply especially to these county commissioners.

It will also be observed that Section 1737 of the General Statutes, among other things, provides that no fees shall be charged in any case or for any official service performed or claimed to be performed by any officer within the state "unless said fees be expressly authorized and their amount be specified by law."

It does not appear that we have a statute which expressly provides for the fees of the sheriff as shown in this case. As to whether or not this fee as stated in your letter is a legal and necessary charge against Columbia County rests largely within the discretion of the county commissioners of your county to determine, keeping in

view the above statutes and the service performed by the sheriff. However, it would seem reasonable at least for the county to pay the actual, necessary expenses incurred by the sheriff and the three commissioners to and from Tallahassee.

I note that you suggest that these men were discharged in Tallahassee, but the order of the court shows that they were not legally discharged from custody until some days after their return to Columbia County.

You are no doubt aware that this office has no authority to officially advise in matters of this kind. However, in several instances where it was thought suggestions would aid in reaching an equitable adjustment of matters, we have directed attention to certain applicable provisions of our statutes.

Hoping this may assist you in arriving at a proper conclusion of the matter, I remain,

Yours very truly,

T. F. WEST,
Attorney General.

INSPECTORS OF MARKS AND BRANDS AND CONSTABLES OFFICERS.

Tallahassee, Fla., June 29, 1917.

Gentlemen:

I have your communication of June 23d and in reply beg to advise that inspectors of marks and brands in this State are appointed by the Governor on recommendation of the board of county commissioners and are commissioned for four years and have prescribed duties and compensations.

Constables are elected by the people and are commissioned and have certain duties and compensations prescribed.