

License to Hunt Game—Fee of Justice of the Peace.

The fee of ten cents allowed justices of the peace for issuing a resident license to hunt, under Section 5, Chapter 57, Laws 1905, is net to the justice. The necessary expenses of transmitting the money to the state treasurer, and the duplicate license and re-

ports to the state game warden, may be deducted by the justice from the amount remitted to the state treasurer.

Helena, Montana, July 11, 1905.

Hon. J. H. Rice, State Treasurer, Helena, Montana.

Dear Sir:—Your request of the 10th instant for an opinion construing Section 5, of Chapter 57, Laws of 1905, relating to the fee of justices of the peace for issuing residence licenses for hunting, to hand, the particular question submitted being as follows: Must the justice of the peace deduct out of the fee allowed him for issuing licenses the expenses of postage and money orders incurred by transmitting to the state treasurer the money received for such licenses, or may such expenses be deducted from the amount that he remits to the state treasurer.

Section 5, Chapter 57, laws of 1905, provides that "Any justice of the peace issuing any resident license as above mentioned may retain as his fee ten cents out of each dollar so collected," and it further provides that "the balance of all moneys so collected shall be sent by him to the state treasurer monthly." It will be noticed that this section does not say that the ten cent fee for issuing the license shall be in full for services in issuing the license and for expenses incurred in transmitting the state's share of the money. Said Section 5, in addition to the allowance of the fee of ten cents for the issuance of each license, also makes it the duty of the justice of the peace to send the state's shares of the money received to the state treasurer, but nothing is said in said section as to the expenses incurred in transmitting such money.

Where the law fixes an officers compensation for official services, either by way of salary or fees, the same is net to him, unless there is an express provision in the law that such compensation shall be in full for services and expenses, or unless it is apparent that the fee allowed is intended to cover the expenses incident to the services performed. In other words, unless there is an express provision to the contrary, an officer is entitled to his actual and necessary expenses incurred in the performance of duties required by law, in addition to the salary or fees allowed him as personal compensation.

Mechem on Public Officers, Section 877, lays down the rule as follows:

"Where a public officer in the due performance of his duty, has been expressly or impliedly required by law to incur expense on the public account, not covered by his salary or commission and not attributable to his own neglect or default, the reasonable and proper amount thereof forms a legitimate charge against the public for which he should be reimbursed. Such a charge may be recovered by action against such inferior municipal governments as are subject to the ordinary process of courts, or against the State or United States government when appropriate tribunals or remedies are provided for that purpose, or credit should be allowed for it in his account."

Therefore, we must hold that the justice of the peace is entitled to receive and retain all of the ten cent fee for the issuing of each license,

and that he is entitled to his actual and necessary expenss incurred in performing the official duty of transmitting the state's portion of such money to the state treasurer. The actual and necessary expenses incurred in transmitting the money means, of course, the most economical method by which the money can be safely sent through the mail or otherwise. The justice of the peace may remit the entire amount, less the ten cent fee, and charge the state with the actual and necessary expenses incurred in remitting same, then present his claim for such expenses, which should be audited and allowed by the board of examiners and the amount paid him out of the fish and game fund, or such expenses may be deducted by the justice of the peace from the amount remitted, where the same is simply postage, or money order and bank draft charges, the reasonableness of which are readily determined, and in such case credit should be allowed for it on his account. The latter method would seem to be the simpler and attended with less red tape.

Yours very truly,

ALBERT J. GALEN,
Attorney General.