

Constables—Fees—Services—Warrant of Arrest.

A constable cannot charge for serving a warrant when the arrest is made by the sheriff, and the only service rendered by the constable is in taking the prisoner from the jail to the magistrate.

R. N. Hawkins, Esq.,
Assistant State Examiner,
Helena, Montana.

January 24, 1930.

My dear Mr. Hawkins:

You have requested an opinion whether a constable may charge for making an arrest when the warrant is delivered by the justice to the

sheriff of the county who apprehends the defendant and places him in jail and the constable comes to the jail, gets the prisoner and takes him before the magistrate. You state that the sheriff charges and collects mileage for making the arrest and delivering the prisoner to the jail, and the constable makes the return on the warrant of arrest and collects a fee of \$1.50 for serving the warrant.

Under the circumstances above mentioned the constable cannot lawfully charge for serving the warrant. He did not arrest the person mentioned in the warrant, as that was done by the sheriff when he took the defendant into custody and placed him in jail. Under the law it is the duty of the sheriff after serving a warrant of arrest to make return on the warrant of that fact. The constable is entitled to make a charge of \$1.50 for serving a warrant of arrest only when he actually serves it, and as in the case mentioned by you he did not make the arrest, that having been previously done by the sheriff to whom the warrant was delivered for service, he cannot truthfully make a return that he served the warrant, or charge therefor.

It is therefore my opinion that the charge made by the constable for serving the warrant under the circumstances described above is not a lawful charge, it being a charge for services that he never performed.

Very truly yours,
L. A. FOOT,
Attorney General.