

January 25, 2012
OPINION 11-0245

Jonathon M. Stewart
District Attorney
Second Judicial District Court
Room 103
100 Courthouse Drive
Arcadia, Louisiana 71001

46—A—Fees & Costs
107—Sheriffs—Constables & Marshalls

R.S. 15:571.11; R.S. 33:1428; R.S. 33:1432; La. C.Cr.Proc. art. 417

The responsibility to reimburse the sheriff for service of the petit juror summons rests with the parish government. Pursuant to R.S. 33:1428, the sheriff may be reimbursed in an amount not to exceed twenty dollars (\$20.00) for service of petit juror summons. Expenses of the criminal court system include the sheriff's costs for service of petit juror summons, and therefore, pursuant to R.S. 15:571.11, the Second Judicial District Criminal Court Fund account may be used to reimburse the sheriff for such service costs upon motion of the district attorney and an approval order of the district court.

Dear District Attorney Stewart:

We have received your request for an opinion pertaining to the appropriateness of reimbursing sheriffs for service of petit jury summons in criminal matters in the Second Judicial District of Louisiana. The Second Judicial District consists of the parishes of Bienville, Claiborne, and Jackson. In your request you have raised the following three (3) questions:

- (1) When summons for petit jury terms are served via certified mail, is the Sheriff's Department entitled to reimbursement of twenty dollars (\$20.00) per person served? If so, what entity is responsible for reimbursement?
- (2) If the answer to question number one is no, is it legal and appropriate for the Sheriff's Department to be reimbursed for the cost of serving the jury summons via certified mail with return receipt requested? If so, what entity is responsible for reimbursement?
- (3) Overall, is it legal and appropriate to pay the Sheriff's Department for service of petit jury summons or reimburse costs for certified mailings from the Second Judicial District Criminal Court Fund?

I. Service of Petit Jury Summons Via Certified Mail is Reimbursable

Article 417 of Louisiana's Code of Criminal Procedure outlines the procedure for summoning petit jurors for all parishes except for Orleans. La. C.Cr.Proc. art. 417(C) states in pertinent part as follows:

- (1) The clerk shall prepare subpoenas directed to the persons on the petit jury venire and deliver them to the sheriff for service.
- (2) The sheriff, **at the election of the district judges of the judicial district in which the parish lies, may** serve such subpoenas by:
 - a. Personal or domiciliary service, **or by registered, certified,** or regular **mail** addressed to such juror at his usual residence or business address.

* * * *

- c. **When service is by registered or certified mail, the sheriff shall attach to his return the receipt of delivery** from the United States Post Office showing the disposition of the envelope bearing the summons to the juror.

* * * *

(West 2011)(emphasis added).

Based on the foregoing, petit jury summons may be served by the sheriffs of Bienville, Claiborne, and Jackson parishes by certified mail if the district judges for the Second Judicial District Court have authorized such a method of service. Consistent with the facts presented in your opinion request, our office will operate under the assumption that this requirement has been met.

Our office has previously found that sheriffs are entitled to all fees and costs incurred in criminal matters, including the issuance of criminal jury subpoenas. See La. Atty. Gen. Op. 07-0187, a copy of which has been included for your review. In La. Atty. Gen. Op. 07-0187, our office relied upon R.S. 33:1428, which identifies those costs and fees sheriffs may recover in civil proceedings, and applied it to R.S. 33:1432, which controls the compensation, fees, and costs sheriffs may recover in criminal matters. Our office concluded that the parish government has the obligation to pay the relatively low operation cost incurred by the sheriffs in issuing jury subpoenas.

Whether a sheriff is entitled to payment of twenty dollars (\$20.00) per summons served via certified mail with return receipt requested requires a closer reading of R.S. 33:1428,

which states in pertinent part:

- A. Sheriffs shall be entitled to no more than the following fees and compensation of office in all civil matters:

(1) **For all service and returns** of legal documents, notices, and subpoenas, **twenty dollars**.

(West 2011)(emphasis added).

Our office interprets the foregoing statutory provision as permitting sheriffs to recover up to twenty dollars (\$20.00) for serving jury subpoenas or summons, but does not mandate that twenty dollars (\$20.00) be paid in all situations. See La. Atty. Gen. Op. 08-0210.¹

Accordingly, it is our office's position that service of petit jury summons via certified mail with return receipt is permissible, and the sheriff should be reimbursed for service in an amount commensurate with the cost of the actual fees for such service, not to exceed twenty dollars (\$20.00). The entity responsible for reimbursing the sheriffs for service is the parish government.

II. Permissible Uses of the Second Judicial District Court's Criminal Court Fund Account

You have also asked whether it is appropriate or permissible to reimburse the sheriff for costs incurred for service of petit jury summons from the Second Judicial District Court's Criminal Court Fund.

R.S. 15:571.11 establishes the "Criminal Court Fund" account ("Fund") which consists of fines and forfeitures, imposed by district courts and conviction fees in criminal cases. Of particular importance is R.S. 15:571.11(A)(1)(a) which states as follows:

All fines and forfeitures, except for forfeitures of criminal bail bonds posted by a commercial security imposed by district courts and district attorneys, conviction fees in criminal cases, and prosecutions for violations of state law or parish ordinances, upon collection by the sheriff or executive officer of the court, shall be paid into the treasury of the parish in which the court is situated and deposited in a special "Criminal Court Fund" account, which, on motion of the district attorney and approval order of the district judge, may be used or paid out in **defraying the expenses of the criminal courts of the parish . . . for all expenses and fees of the petit**

¹ In criminal matters, the district court judges may elect to permit the parish sheriff to serve petit jury summons or subpoenas by certified mail return receipt. No such provision exists for civil matters; therefore, in civil matters, sheriffs are only allowed to recover for personal service.

jury and grand jury . . . In the Second Judicial District, the criminal court fund shall be used to defray the expenses of the criminal court system.

R.S. 15:571.11(A)(1)(a)(emphasis added).

While other judicial districts may be able to use the Fund for broader purposes, the statutory language of R.S. 15:571.11 limits the use of this Fund within the Second Judicial District for the purpose of “defray[ing] the expenses of the criminal court system.” We believe that the petit jury serves an essential part of our criminal court system. See La. C.Cr.Proc. art. 784 (explains that a jury panel shall be selected from the petit jury).

Procedurally, you, as the district attorney, must motion the court to use the money in this Fund. If the judge approves your motion, finding that this reimbursement is a proper use of the Fund to defray the expenses of the criminal court system, then the money from the Fund may be released. Ultimately, the district judge has sole discretion in determining whether the cost of the service of petit jury summons by the sheriff may be paid out of the Fund. See La. Atty. Gen. Op. 88-58.

Therefore, it is our office’s opinion that when service of a petit jury summons is made by the sheriff through the United States Postal Service via certified mail with return receipt requested, the costs incurred for each individual summons may be reimbursed in an amount not to exceed twenty dollars (\$20.00). It is the further opinion of our office that the district attorney may seek reimbursement of court costs from the Second Judicial District Criminal Court Fund as this money may be used for the purpose of defraying expenses of the criminal court system subject to the approval of the district judge.

Although it may be permissible, pending approval of the district court, to reimburse the sheriff from the Fund, please note that the parish government has the ultimate responsibility to reimburse the sheriff for the cost of service of petit juror summons.

We hope that this information sufficiently answers your inquires. If we can be of further assistance, please do not hesitate to contact us.

Very truly yours,

JAMES D. “BUDDY” CALDWELL
ATTORNEY GENERAL

By: _____
KATHERINE K. GREEN
Assistant Attorney General

SYLLABUS
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DATE RELEASED: January 25, 2012

KATHERINE K. GREEN, ASSISTANT ATTORNEY GENERAL