

CHAPTER 357

FEES

357.01 ALLOWANCE.

HISTORY. R.S. 1851 c. 73 s. 1; P.S. 1858 c. 63 s. 1; 1865 c. 64 s. 1; G.S. 1866 c. 70 s. 1; G.S. 1878 c. 70 s 1; G.S. 1894 s. 5537; R.L. 1905 s. 2693; G.S. 1913 s. 5755; G.S. 1923 s. 6986; M.S. 1927 s. 6986.

357.02 FEES OF CLERK OF DISTRICT COURT.

HISTORY. R.S. 1851 c. 73 s. 2; P.S. 1858 c. 63 s. 2; 1865 c. 64 s. 1; G.S. 1866 c. 70 s. 2; 1877 c. 120 s. 5; 1878 c. 50 s. 1; G.S. 1878 c. 70 s. 2; 1883 c. 48 ss. 1, 2; 1885 c. 101; 1889 c. 160 s. 1; 1893 c. 181 s. 1; G.S. 1894 s. 5538; 1897 c. 19; 1901 c. 246; R.L. 1905 s. 2694; 1913 c. 414 s. 1; G.S. 1913 s. 5756; G.S. 1923 s. 6987; M.S. 1927 s. 6987; 1937 c. 187 s. 1.

The clerk is entitled to 20 cents for searching the records and files for each year in respect to judgments against each person whose name is furnished him, although a number of names are given to him at one time in one order. *Church v St. P. & N. P. Ry. Co.* 33 M 410, 23 NW 860.

The clerk of the district court is not entitled to fees from the county for administering oaths to jurors and witnesses for the state in criminal cases, for the purpose of verifying their accounts for per diem and mileage for attendance at court. *Wilcox v Sibley*, 34 M 214, 25 NW 351.

A county cannot be held liable for the services of the clerk of the district court in indexing the judgment records of his office; nor can such liability be fixed upon the county by the order of the judge of the district court directing the clerk to perform the work at the expense of the county and determining his fees therefor. *Rasmussen v Clay*, 41 M 283, 43 NW 3.

Upon tender of the fees prescribed by law, the clerk is required to search the records in his custody, upon request of any person engaged in the business of making abstracts of title, and certify and deliver transcripts of judgments entered upon his docket. The fact that such abstracter intends to use the information so furnished indiscriminately in his business is immaterial; and mandamus will lie to compel the clerk to perform this duty. *State ex rel v Scow*, 93 M 11, 100 NW 382.

Upon the passage by the congress of the uniform naturalization laws, the attorney general of the state ruled that the clerks of court were entitled to one-half of the naturalization fees. Although this may have been an error to start with, the ruling has been acquiesced in for over 20 years and has been recognized and assumed to be correct by the legislature, and it is now construed to be controlling and the courts should not now depart from practice which has been in vogue since 1906. *County v Ryberg*, 168 M 385, 210 NW 195.

To render an appeal effective for any purpose the notice of appeal and the bond must be filed, and the appeal fee must be deposited within the statutory time for taking the appeal. In the instant case, the time having expired before the deposit of the appeal fee, the appeal never became effective and is dismissed. *Wheeler v Crane*, 141 M 78, 169 NW 476, 597.

When a fee office has by statute been put upon a salary basis, its fees are public property; and sheriff of St. Louis county is by virtue of his office a trustee in respect to the fees earned by him whether collected or not. He is held to strict accountability and the highest degree of care must be exercised as to the collection of such fees, the burden being upon him to prove the exercise of such care. *County v Magie*, 198 M 127, 269 NW 205.

Upon judgment for the defendant, the plaintiff is liable from the deposit required by this section for the fees prescribed. 1936 OAG 140, Dec. 2, 1935 (144b-9).

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Construction as to the payment of fees in certain municipal courts. 1936 OAG 147, Jan. 16, 1936 (196j).

Each individual name submitted as part of an entity constitutes a single "judgment debtor." OAG Nov. 24, 1936 (144h-15).

The prevailing county in pauper settlement cases is entitled to clerk costs. OAG April 12, 1938 (144b-15).

357.03 EXTRA FEES OF CLERK OF DISTRICT COURT.

HISTORY. 1929 c. 207; M. Supp. 6987-1.

357.04 FEES OF CLERK OF COURT IN CERTAIN COUNTIES.

HISTORY. 1911 c. 247 s. 1; G.S. 1913 s. 5757; G.S. 1923 s. 6988; M.S. 1927 s. 6988.

357.05 FEES OF CLERK OF DISTRICT COURT IN ST. LOUIS COUNTY.

HISTORY. 1921 c. 253 s. 1; G.S. 1923 s. 6989; M.S. 1927 s. 6989.

357.06 CLERK'S FEES TO BE RETAINED IN CERTAIN COUNTIES.

HISTORY. 1907 c. 268 s. 1; G.S. 1913 s. 5758; G.S. 1923 s. 6990; M.S. 1927 s. 6990.

357.07 DEPOSIT FOR FEES.

HISTORY. R.S. 1851 c. 73 s. 2; P.S. 1858 c. 63 s. 2; 1865 c. 64 s. 1; G.S. 1866 c. 70 s. 2; 1877 c. 120 s. 5; 1878 c. 50 s. 1; G.S. 1878 c. 70 s. 2; 1883 c. 48 ss. 1, 2; 1885 c. 101; 1889 c. 160 s. 1; 1893 c. 181 s. 1; G.S. 1894 s. 5538; 1901 c. 246; R.L. 1905 s. 2695; G.S. 1913 s. 5760; G.S. 1923 s. 6991; M.S. 1927 s. 6991.

No deposit fee having been paid, no change of venue was effected and the writ of mandamus directed to the clerk is discharged. State ex rel v District Court, 178 M 617, 225 NW 926.

The clerk is not entitled to a deposit for entering a confessed judgment under Laws 1939, Chapter 91, Section 4. OAG April 27, 1939 (144b-16).

357.08 FEES TO BE PAID BY APPELLANT IN AN APPEAL TO THE SUPREME COURT.

HISTORY. R.S. 1851 c. 73 s. 3; P.S. 1858 c. 63 s. 3; G.S. 1866 c. 70 s. 3; G.S. 1878 c. 70 s. 5; G.S. 1894 s. 5545; 1897 c. 19; R.L. 1905 s. 2696; G.S. 1913 s. 5761; 1915 c. 177 s. 1; 1917 c. 66 s. 1; 1919 c. 97 s. 1; G.S. 1923 s. 6992; M.S. 1927 s. 6992.

The statutory fees not being deposited in the clerk's office within the statutory time, the appeal must be dismissed. Baxter v Orinoco, 158 M 530, 197 NW 219; Baxter v Orinoco, 160 M 535, 202 NW 829.

The state is not required to pay the fee to the supreme court when appealing from an order of the probate court determining inheritance taxes. OAG Aug. 3, 1936 (6m).

357.09 FEES OF SHERIFFS.

HISTORY. R.S. 1851 c. 73 s. 8; P.S. 1858 c. 63 s. 8; 1865 c. 65 s. 1; G.S. 1866 c. 70 s. 10; 1878 c. 8 s. 1; G.S. 1878 c. 70 s. 11; G.S. 1894 s. 5550; 1903 c. 294; R.L. 1905 s. 2697; 1913 c. 197 s. 1; G.S. 1913 s. 5762; 1917 c. 363 s. 1; G.S. 1923 s. 6993; M.S. 1927 s. 6993.

A sheriff or constable is entitled to mileage for travel to serve a criminal warrant, even if through no fault of his he fails to serve it. Davis v County, 37 M 491, 35 NW 364; Wagner v Board, 76 M 368, 79 NW 166.

Where a sheriff has in his hands for service several writs against different persons, for different causes, and makes service of two or more writs in the course of one trip, he is entitled to charge full mileage on each writ so served. Steenerson v Board, 68 M 509, 71 NW 687.

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For selling mortgaged personal property upon the decree of foreclosure, the statute allows the sheriff of Hennepin county a compensation of \$3.00 only. *Thompson v St. P. & Pac. Ry. Co.* 26 M 353, 4 NW 603.

When a sheriff levies an execution and sells the property, the execution creditor being the purchaser, it is a collection of the amount of the bid and the sheriff is entitled to his percentage. *Sharvey v Central Vermillion*, 57 M 216, 58 NW 864.

The per diem allowed by statute to the sheriff for attendance upon a term of court covers such services as presenting into court and removing prisoners for arraignment, trial, and sentence. *Connolly v County*, 35 M 365, 29 NW 1; *Wagner v Board*, 76 M 368, 79 NW 166.

The sum allowed the sheriff for boarding prisoners includes washing done for them. *Connolly v County*, 35 M 365, 29 NW 1.

On taxation of costs, plaintiff was allowed certain sums for necessary expenses and fees incurred by the sheriff on the first execution. *Barman v Miller*, 23 M 458.

Under the statute which allows the sheriff for expenses in keeping seized property safely, such sum as may be allowed by the court, a court order is necessary authorizing the taxation before the clerk taxes the costs; but if the sum is taxed without a previous court order, the irregularity is cured by the subsequent action of the court on appeal. *Barman v Miller*, 23 M 458.

A sheriff is not entitled to a fee of \$1.00 from his county for each execution issued upon a personal property tax judgment delivered to him and returned by him unsatisfied. *Justus v Board*, 94 M 72, 101 NW 943.

Overruling *Schmid v County*, 44 M 67, 46 NW 145, the sheriff is not entitled to fees for making a writ of "no property found" on tax warrants issued for the collection of delinquent personal property taxes. *Chapel v Board*, 71 M 18, 73 NW 520.

Plaintiff having voluntarily paid the sheriff's fees in the instant case is not entitled to recover them from the defendant. *Williams v Bushnell*, 157 M 459, 196 NW 491.

Where the plaintiff deposited the necessary jury fee, he was entitled to a trial in the civil action without prepayment of the costs of the justice or witnesses, but having an adequate remedy by appeal, the plaintiff is not entitled to a writ of mandamus to compel enforcement of the right. *Gresham v Delaney*, 213 M 217, 6 NW(2d) 97.

The sheriff motored some distance into the county to the scene of a riot and his car was badly damaged and he presented his bill to the county board to cover costs of repair. The general provisions of section 357.09 have been superseded in so many counties that it is difficult for the attorney general's office to render an opinion, but in the absence of a special statute the laws limit the allowance for use of sheriff's automobile to five cents per mile. 1934 OAG 259, Dec. 11, 1933 (390a-4).

The sheriff is entitled to mileage both going and returning from serving papers. OAG Feb. 14, 1929.

The county clerk is charged only with the duty of preparing original papers in delinquent personal property tax cases, and it is the duty of the sheriff to prepare the copies, for which he may be allowed a reasonable compensation. OAG Aug. 1, 1930.

Whenever a collection is made on executions after levy, the sheriff is entitled to fees provided in this section, but is not entitled to mileage in addition thereto. OAG Oct. 14, 1932.

Except where the county is a party, the sheriff is entitled to charge \$1.00 upon returning an execution unsatisfied. OAG March 8, 1932.

After the sheriff collects an execution in full or in part he is not entitled to the \$1.00 charge, but must obtain his fees out of the moneys collected. OAG March 8, 1932.

The sheriff's charge against another state for transporting a prisoner to the boundary line of the state is construed to be \$4.00 per diem. OAG March 6, 1931.

The sheriff may not charge auto mileage while riding with a truck driver employed to haul goods and furniture of poor persons to their place of legal settlement. OAG March 9, 1939 (390a-11).

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The fees of the sheriff in foreclosure sales under a chattel mortgage differ according to the circumstances of the case and the county in which the sale is made. 1940 OAG 204, July 31, 1939 (390c-11).

Where at an execution sale of real estate the judgment creditor bid in the property the sheriff is entitled to percentage of the amount bid. 1942 OAG 211, June 24, 1942 (390C-11).

In case the sheriff attempts to collect personal property tax warrants and is unsuccessful he is allowed and should be paid his mileage as allowed by the county board. 1942 OAG 214, Oct. 21, 1942 (390C-13).

Where the sheriff travels in an attempt to make service, but makes a return of not found, he may have his mileage as in other cases. 1942 OAG 215, Aug. 8, 1942 (390C-10).

Advice as to fees of game wardens in criminal prosecutions. Taxation of costs. OAG Jan. 11, 1944 (208i-6).

When unable to collect the full amount of a judgment, the sheriff may have fees or the amount collected. OAG Jan. 13, 1944 (390c-11).

Where the sheriff, having a warrant for arrest of a person, without extradition papers and against the advice of the county attorney, brings back a person from another state, he is entitled to reasonable expenses for himself and assistant, but no per diem or mileage. OAG Dec. 29, 1944 (390c-3).

357.10 COMPENSATION OF OFFICERS IN CERTAIN COUNTIES.

HISTORY. 1903 c. 375 ss. 1, 2; R.L. 1905 s. 2698; G.S. 1913 s. 5763; G.S. 1923 s. 6994; M.S. 1927 s. 6994.

357.11 FEES OF CORONERS.

HISTORY. R.S. 1851 c. 73 s. 9; P.S. 1858 c. 63 s. 9; G.S. 1866 c. 70 s. 11; 1873 c. 46 s. 1; G.S. 1878 c. 70 s. 13; 1887 c. 89; G.S. 1894 s. 5554; 1901 c. 200; R.L. 1905 s. 2699; 1909 c. 271 s. 1; 1913 c. 216 s. 1; G.S. 1913 s. 5764; G.S. 1923 s. 6995; M.S. 1927 s. 6995; 1943 c. 314 s. 1; 1945 c. 403 s. 1; 1945 c. 440 s. 1.

The trial court rightfully directed a verdict for the defendant in this action brought by the widow against the coroner for mutilation of the body of her husband, the autopsy not having been authorized by her. *Kingsley v Forsyth*, 192 M 468, 257 NW 95.

The physician who performed an autopsy is entitled to witness fees at the inquest. 1934 OAG 639, Nov. 8, 1932 (103i).

The coroner cannot claim compensation both as coroner and as physician making autopsy. 1936 OAG 116, Feb. 7, 1935 (104b-5).

The coroner is not entitled to charge, in addition to his regular fee and mileage, the expense of an ambulance. 1938 OAG 139, Oct. 9, 1937 (103a).

At a coroner's inquest a charge of 15 cents per folio for writing the record may be made. That is all the coroner may charge; that is all he can pay the reporter in case one is called in to make the record. 1940 OAG 187, Feb. 17, 1939 (103a).

The coroner is not entitled to additional compensation for acting as sheriff in a county operating under a separate law which places the compensation of the sheriff on an annual basis. OAG Oct. 14, 1932.

357.12 FEES OF CONSTABLES.

HISTORY. R.S. 1851 c. 73 s. 10; P.S. 1858 c. 63 s. 10; G.S. 1866 c. 70 s. 12; G.S. 1878 c. 70 s. 14; G.S. 1894 s. 5555; R.L. 1905 s. 2700; 1907 c. 190 s. 1; G.S. 1913 s. 5765; 1917 c. 170 s. 1; G.S. 1923 s. 6996; M.S. 1927 s. 6996.

A constable is entitled to mileage for traveling to serve a criminal warrant even if through no fault of his he fails to make the service. *Davis v County of Le Sueur*, 37 M 491, 35 NW 364.

It is contended that Laws 1917, Chapter 170, which authorizes a private person to serve a justice court summons, is unconstitutional because the matter of subject service is not within the title of the action. The instant case leaves that question undetermined. *Whitney v Welnitz*, 153 M 162, 190 NW 57.

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A person commissioned by the commissioner of public safety of the city of St. Paul as a special police officer at the request of a justice of the peace to serve processes issued out of his court is entitled to recover of an attorney practicing in said court for such processes so served at the attorney's request, the fees prescribed by this section. *Russ v Kane*, 205 M 187, 285 NW 472.

If a prisoner is transported by the constable in his own car the constable is entitled to ten cents per mile, but is not entitled to any allowance for the transportation expenses of the prisoner. The constable's allowance is not affected by Laws 1933, Chapter 13. 1934 OAG 637, Sept. 22, 1933 (847a-5).

An officer serving at the polls during an election is entitled to the same compensation as a special officer. OAG April 11, 1933.

357.13 POLICE OFFICERS; FEES IN STATE CASES.

HISTORY. 1901 c. 183; R.L. 1905 s. 2701; G.S. 1913 s. 5766 G.S. 1923 s. 6997; M.S. 1927 s. 6997.

On trial of violations of state laws in the municipal court, if the officer attending the trial and who made the arrest is a salaried police officer, costs cannot be taxed for his attendance, service, and mileage. OAG May 9, 1939 (199a-3).

In a state case a police officer receives no fees for executing a commitment. If there are expenses he may send his bill to the county for allowances. OAG Feb. 23, 1944 (91b).

357.14 FEES OF JUSTICES OF THE PEACE.

HISTORY. R.S. 1851 c. 73 s. 13; P.S. 1858 c. 63 s. 13; G.S. 1866 c. 70 s. 15; 1867 c. 89 s. 1; G.S. 1878 c. 70 s. 17; G.S. 1894 s. 5558; 1901 c. 273; R.L. 1905 s. 2702; G.S. 1913 s. 5767; 1917 c. 169 s. 1; G.S. 1923 s. 6998; M.S. 1927 s. 6998.

A justice of the peace after he had rendered judgment in a case may recover his unpaid fees in an action upon an implied contract. *Conlon v Holste*, 99 M 493, 110 NW 2.

The plaintiff made a deposit sufficient to pay the jury fees but the justice refused to issue venire without the payment of justice and constable fees. Plaintiff endeavored by mandamus to compel the justice to issue a venire. The plaintiff has an adequate remedy by appeal and is not entitled to writ of mandamus and the writ was therefore quashed. *State ex rel v Delaney*, 213 M 217, 6 NW(2d) 97.

A justice is not entitled to charge folio rates for listening to testimony, the testimony not having been reduced to writing and not having been entered in his docket. 1936 OAG 143, Oct. 21, 1935 (266b-8).

A village incorporated under the laws of 1885 has no power to alter the compensation of the village justice. OAG Sept. 7, 1934 (266a-13).

A justice is not entitled to compensation for preparing copies of garnishee summons. OAG Sept. 30, 1930.

Where no judgment is entered the justice cannot charge a fee for "entering judgment." OAG March 20, 1937 (266b-8).

There is no statute permitting a county to pay a reporter for taking testimony at preliminary hearing. OAG April 20, 1937 (129).

If a justice of the peace charges 15 cents per folio for transcribing evidence taken at a preliminary hearing and transmits same to district court he must pay the expenses of the stenographer out of his specified compensation. OAG Nov. 2, 1933.

357.15 FEES IN JUSTICE COURTS; COSTS AND DISBURSEMENTS.

HISTORY. R.S. 1851 c. 73 ss. 14 to 21; P.S. 1858 c. 63 ss. 14 to 21; G.S. 1866 c. 70 ss. 16 to 23; G.S. 1878 c. 70 ss. 18 to 25; G.S. 1894 ss. 5559 to 5566; R.L. 1905 s. 2703; G.S. 1913 s. 5768; G.S. 1923 s. 6999; M.S. 1927 s. 6999.

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While a party may appeal without paying his own witnesses, the payment of the costs and fees for making the return are essential conditions to the jurisdiction of the justice to allow an appeal. *Trigg v Larson*, 10 M 220 (175).

Where a party on appeal pays the justice's fees in full as taxed he cannot object to them in the appeal, and where witnesses attend and are sworn their fees may be taxed even though not subpoenaed. *Clague v Hodgson*, 16 M 329 (291).

Question as to whether more than one witness may testify as to any particular fact is a matter for the court to determine from the testimony given. OAG Dec. 15, 1933.

357.16 FEES OF COMMISSIONERS TO TAKE TESTIMONY.

HISTORY. R.S. 1851 c. 73 s. 4; P.S. 1858 c. 63 s. 4; G.S. 1866 c. 70 s. 4; G.S. 1878 c. 70 s. 6; G.S. 1894 s. 5546; R.L. 1905 s. 2704; G.S. 1913 s. 5769; G.S. 1923 s. 7000; M.S. 1927 s. 7000.

357.17 FEES OF NOTARIES PUBLIC.

HISTORY. R.S. 1851 c. 73 s. 12; P.S. 1858 c. 63 s. 12; G.S. 1866 c. 70 s. 14; G.S. 1878 c. 70 s. 16; G.S. 1894 s. 5557; 1899 c. 194; R.L. 1905 s. 2705; G.S. 1913 s. 5770; G.S. 1923 s. 7001; M.S. 1927 s. 7001.

357.18 FEES OF REGISTER OF DEEDS IN CERTAIN COUNTIES.

HISTORY. R.S. 1851 c. 73 s. 24; P.S. 1858 c. 63 s. 24; G.S. 1866 c. 70 s. 24; 1877 c. 120 s. 4; G.S. 1878 c. 70 s. 26; G.S. 1894 s. 5567; R.L. 1905 s. 2706; 1907 c. 256; 1911 c. 376 s. 1; G.S. 1913 s. 5771; G.S. 1923 s. 7002; M.S. 1927 s. 7002.

Counties are not liable to the register of deeds for keeping reception books under General Statutes 1866, Chapter 8, Section 155. *Nordin v Board*, 23 M 171.

The evidence fully warranted the finding of the jury that the defendant register of deeds was guilty of embezzlement. *State v Borgstrom*, 69 M 508, 72 NW 799, 975.

Finding as to fees in connection with the filing of chattel mortgage and rural credit lease. OAG January 27, 1934.

The register of deeds may recover from the secretary of state fees for filing certificates of consent to acquisition of land by the federal government. OAG Dec. 18, 1934 (373b-10(k)).

Letters or signs representing an abbreviation may be counted as a word in determining the number of words in a folio. OAG Jan. 4, 1937 (373b-10).

Where the document presented contained a conditional sales contract and also an assignment of the contract, a fee may be charged for each. OAG June 19, 1939 (373b-6).

When the sheriff files with the register of deeds an appointment of a deputy, the register must accept the filing, but need not record the instrument. The register should receive ten cents for filing. 1942 OAG 205, Aug. 31, 1942 (373B-10-b).

357.19 FEES OF REGISTER OF DEEDS IN HENNEPIN COUNTY.

HISTORY. 1921 c. 442 s. 1; G.S. 1923 s. 7003; M.S. 1927 s. 7003.

357.20 FEES OF REFEREES; AGREEMENT BY PARTIES.

HISTORY. G.S. 1866 c. 70 s. 25; G.S. 1878 c. 70 s. 28; G.S. 1894 s. 5572; R.L. 1905 s. 2707; G.S. 1913 s. 5772; G.S. 1923 s. 7004; M.S. 1927 s. 7004.

Referees provided for in Laws 1895, Chapter 175, selected to adjust losses by fire under a standard policy are not official referees and their fees are not regulated by this section. *Alden v Christianson*, 83 M 81, 85 NW 824.

Compensation of commissioners, appointed by the governor to hear and report evidence in proceedings for the removal of a county official, is governed by

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this section and the governor has no authority to enlarge the fees except from contingent fund, or to impose additional obligation upon the county for stenographic service. *Hillman v Board*, 84 M 130, 86 NW 890.

357.21 FEES FOR SERVICES UNDER LEGAL PROCESS; APPRAISERS.

HISTORY. R.S. 1851 c. 73 s. 25; P.S. 1858 c. 63 s. 25; G.S. 1866 c. 70 s. 26; G.S. 1878 c. 70 s. 29; G.S. 1894 s. 5573; R.L. 1905 s. 2708; 1909 c. 17 s. 1; G.S. 1913 s. 5773; G.S. 1923 s. 7005; M.S. 1927 s. 7005.

The sheriff being advised of a bank robbery in a neighboring town in his county picked up three police officers of the city of Austin, together with various equipment, engaged in a gun fight with the robbers, and captured them. The police officers filed bills with the county for \$50.00 each for their assistance. The county board is limited to payment of these officers at the rate of \$3.00 per day and mileage. The money could not be paid out as a reward because the county board had not authorized the payment of a reward. 1940 OAG 203, Dec. 11, 1939 (390a-11).

The sheriff has no authority to hire investigators in arson cases and he cannot bind the county for payment of their services except so far as he is authorized to select such deputies who would receive compensation as deputies. OAG Aug. 30, 1937 (179a).

Guard accompanying sheriff to bring back prisoners from another state is entitled to \$3.00 per day, the sheriff having paid all expenses. OAG Nov. 21, 1944 (390c-3).

357.22 FEES OF WITNESSES.

HISTORY. R.S. 1851 c. 73 s. 7; R.S. 1851 c. 95 s. 3; P.S. 1858 c. 63 s. 7; P.S. 1858 c. 84 s. 3; G.S. 1866 c. 70 ss. 7, 8; 1872 c. 76 s. 1; G.S. 1878 c. 70 ss. 8, 9; G.S. 1894 ss. 5547, 5548; 1895 c. 241; R.L. 1905 s. 2709; G.S. 1913 s. 5774; G.S. 1923 s. 7006; M.S. 1927 s. 7006.

Where witnesses attend and are sworn, though not subpoenaed, their fees may be taxed. *Clague v Hodgson*, 16 M 329 (291).

In the absence of any special agreement fixing a different rate, the witness fees are as prescribed by statute. *Holbrook v Cooley*, 25 M 275.

The affidavit of the travel of a witness should state the place of residence of witness and the number of miles traveled in going from his residence to the place of trial and returning. *Merriman v Bowen*, 35 M 297, 28 NW 921.

A witness is entitled to mileage and per diem prescribed by statute and the party procuring the attendance is liable therefor, and the fact that the party calling the witness provides him with free transportation does not relieve him of such liability to the witness. *Jakutis v Illinois Central*, 133 M 33, 157 NW 896.

A nonresident is entitled to mileage for the actual distance traveled within the state and he is under no obligation, where there are several routes, to select the one with the least mileage. *Jukatis v Illinois Central*, 133 M 33, 157 NW 896.

In the absence of any special law to the contrary, section 357.22 covers the fees and mileage of witness in criminal cases. Laws 1931, Chapter 331, as amended, does not apply. 1934 OAG 271, Feb. 25, 1933 (260a-4).

The sheriff or deputies are not entitled to witness fees in connection with dependant, neglected, and delinquent children in juvenile court. OAG Nov. 24, 1933.

The county attorney may pay the traveling expenses of state witnesses from his contingent fund. OAG May 16, 1935 (196r).

357.23 WITNESS FEES OF OFFICERS OF MUNICIPALITIES.

HISTORY. 1895 c. 241; 1905 c. 141 s. 1; G.S. 1913 s. 5775; G.S. 1923 s. 7007; M.S. 1927 s. 7007.

Where county officers reside in the city where suits are tried the county auditor should not issue warrants to them for witness fees, but in other cases

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where the payment of fees and mileage is not prohibited the county officers would be entitled to fees. OAG June 12, 1939 (196r).

357.24 FEES IN CRIMINAL CASES.

HISTORY. 1863 c. 35 s. 1; G.S. 1866 c. 70 s. 9; 1870 c. 77 s. 1; G.S. 1878 c. 70 s. 10; 1881 c. 74 s. 1; G.S. 1894 s. 5549; R.L. 1905 s. 2710; G.S. 1913 s. 5776; G.S. 1923 s. 7008; M.S. 1927 s. 7008

Witness for the state in criminal case are entitled to fees for their attendance and mileage and they may be taxed in the costs. *State v Bliss*, 21 M 458.

The clerk of the district court, for administering oaths to jurors and witnesses for the state in criminal cases for the purpose of verifying their fees, is not entitled to compensation. *Wilcox v Sibley*, 34 M 214, 25 NW 351.

When a defendant in a criminal action pending in justice court, is acquitted, the county is not liable for the fees of an officer incurred in serving of a subpoena upon a witness for the defense. *Hendershott v Fillimore*, 45 M 281, 47 NW 810.

One found guilty in the justice court and acquitted by the district court is not entitled to file a claim with the county commissioner for witness fees and mileage in the justice court. OAG June 4, 1935 (196r-1).

357.25 EXPERT WITNESSES.

HISTORY. R.S. 1851 c. 73 s. 7; P.S. 1858 c. 63 s. 7; G.S. 1866 c. 70 s. 7; 1872 c. 76 s. 1; G.S. 1878 c. 70. s. 8; G.S. 1894 s. 5547; R.L. 1905 s. 2711; G.S. 1913 s. 5777; G.S. 1923 s. 7009; M.S. 1927 s. 7009.

The matter of allowances being in the discretion of the trial court, the supreme court will not modify the amount allotted unless the trial court abuses such discretion. *Le Mere v McHale*, 30 M 410, 15 NW 682.

The witness is testifying as an expert witness if he testifies to an opinion founded on special study or experience in any profession or calling, or if he makes a professional examination with some connection with the issues in the case, and is able to state the results of the examination. It does not apply when he testifies as to matters of fact which come into his personal knowledge while engaged in ordinary practice of his profession. *Le Mere v McHale*, 30 M 410, 15 NW 682.

Expert witness fees may be allowed after he has been sworn and examined or after he has been summoned and dismissed without being sworn and examined, but not before. *State v Teipner*, 36 M 535, 32 NW 678.

The probate court has jurisdiction to allow and order paid, out of the estate of an insane person, the witness fees incurred upon a hearing where the insane person petitions to be restored to capacity. *Kelly v Kelly*, 72 M 19, 74 NW 899.

The trial court did not abuse its discretion in fixing the fees of hydraulic engineers testifying as experts in relation to a contract of rental by the municipality and a private water corporation. *Farmer v Stillwater*, 86 M 59, NW 10.

While physicians and surgeons are engaged to treat and examine an injured person for the purpose of acquiring a knowledge necessary to qualify them as expert witnesses, they are not necessarily disqualified as such by the fact that they also treated the patient professionally, distinguishing *Le Mere v McHale*, 30 M 410, 15 NW 682. *Anderson v M. St. P. & S. S. M. Ry. Co.* 103 M 184, 114 NW 744.

A civil engineer may in the discretion of the trial court be allowed expert witness fees. *Melander v County*, 170 M 378, 212 NW 590.

Section 357.25 does not apply to actions in the federal court. *Henkle v Chicago*, 52 F(2d) 313, 284 US 444.

The fact that an expert witness is employed by and in service of the state does not disqualify him from receiving compensation as an expert witness. *Bekkemo v Erickson*, 186 M 108, 242 NW 617.

There was no abuse of discretion in allowing certain attorneys testifying as expert witnesses \$25.00 a day when others were allowed only \$10.00. *Senneka v Bickle*, 199 M 345, 271 NW 813.

The allowance by order of trial court according to recognized practice of expert witness fees to prevailing party was proper. The testimony only related to those matters on which double indemnity was claimed, which issue is claimed to have been moot, but nevertheless the experts should be paid. *Kundiger v Metropolitan*, 218 M 273, 15 NW(2d) 488.

It is not improper for the accused's trial attorney, prior to trial, to interview a physician who testified before the grand jury, or to offer him a sum in excess of the usual witness' fees for his attendance upon the trial, so long as no attempt was made to have him testify falsely. *State v Gorman*, 219 M 162, 17 NW(2d) 42.

Where the probate court appointed two medical doctors trained in psychiatry as examiners, their fees as expert witnesses are payable by the county on order of the probate court, and the district court would have no authority except in case of appeal. 1940 OAG 34, April 12, 1940 (248b-11).

In a case involving a psychopathic personality, a psychiatrist employed in the state hospital at St. Peter may be paid compensation as expert witness. 1940 OAG 35, June 1, 1940 (248b-11).

Expert witnesses; right to additional compensation. 14 MLR 433.

Expert witnesses' fees allowable under state statute not taxable as costs in federal courts. 16 MLR 856.

357.26 COMPENSATION OF JURORS.

HISTORY. R.S. 1851 c. 73 s. 26; P.S. 1858 c. 63 s. 26; G.S. 1866 c. 70 s. 27; 1870 c. 80 s. 1; G.S. 1878 c. 70 s. 30; 1891 c. 83 s. 1; G.S. 1894 s. 5574; 1895 c. 304; R.L. 1905 s. 2712; 1909 c. 129 s. 1; G.S. 1913 s. 5778 s. 1919 c. 73 s. 1; 1921 c. 95 s. 1; G.S. 1923 s. 7010; M.S. 1927 s. 7010; 1933 c. 123 s. 1.

Where jurors verify their accounts in order to collect their mileage and per diem the clerk of court who administers their oaths is not entitled to compensation. *Wilcox v Sibley*, 34 M 214, 25 NW 351.

Where a deputy clerk issued false certificates for alleged jury service and obtained a return order from the county auditor and forged the names of the payees on the back of each certificate, it was negligence on the part of treasurer in not ascertaining whether the purported signatures of the payees were genuine, and county may recover from treasurer the amount paid out on forged signatures. *Board v Nelson*, 51 M 79, 52 NW 991.

Prior to the adoption in 1892 of the amendment prohibiting special legislation, Ramsey county had a special law regarding the payment of jurors. Laws 1895, Chapter 304, is a general law of uniform operation throughout the state and indicates an intention to repeal prior special legislation so far as inconsistent with the general law. *State v Sullivan*, 62 M 283, 64 NW 813.

A county commissioner in attending board meetings is entitled to computed mileage for the distance "necessarily traveled" by the usual travel route from the place of residence to county-seat. *County v Rooke*, 134 M 346, 159 NW 791.

Laws 1931, Chapter 331, does not affect mileage of witnesses or jurors. 1934 OAG 271, Feb. 25, 1933 (260a-4).

"Attendance in district court" means actual attendance at court and when jurors are excused for a definite time or the court is adjourned to a fixed date, the jurors are not entitled to compensation during such adjourned period. 1934 OAG 281, May 16, 1933 (260a-4).

"Including Sundays" means that the jury shall be compensated for Sundays only in the event that such jury actually serves as jurors on Sunday. 1934 OAG 281, May 16, 1933 (260a-4).

An individual juror is not entitled to extra day's pay, put in on investigation and committee meetings, on days when the jury has had no meeting and no quorum was present. 1938 OAG 287, April 20, 1937 (260b).

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A juror is not entitled to extra pay because he deliberated on cases until after midnight. OAG June 11, 1929.

357.27 CORONER AND JUSTICE JURORS.

HISTORY. R.S. 1851 c. 73 s. 26; P.S. 1858 c. 63 s. 26; G.S. 1866 c. 70 s. 27; 1870 c. 80 s. 1; G.S. 1878 c. 70 s. 30; 1891 c. 83 s. 1; G.S. 1894 s. 5574; 1899 c. 299; R.L. 1905 s. 2713; G.S. 1913 s. 5779; G.S. 1923 s. 7011; M.S. 1927 s. 7011.

In justice court a party calling for a jury must pay the jurors' fees into court in advance and if he refuses to do so the justice may proceed to try case without jury. *Rollins v Nolting*, 53 M 232, 54 NW 1118.

Jurors in justice court are not entitled to mileage. 1938 OAG 166, July 6, 1938 (260a-4).

In justice court a juror receives \$1.00 for the entire case and not \$1.00 for each day's service. OAG May 4, 1938 (260a-4).

357.28 FEES OF COURT COMMISSIONER.

HISTORY. 1868 c. 97 s. 1; G.S. 1878 c. 70 s. 32; G.S. 1894 s. 5582; 1897 c. 311 s. 8; 1903 c. 255; R.L. 1905 s. 2715; G.S. 1913 s. 5781; 1915 c. 203 s. 2; G.S. 1923 s. 7012; M.S. 1927 s. 7012.

A court commissioner is not entitled to mileage when conducting invalidly, hearings away from the county-seat. OAG Aug. 14, 1933.

357.29 FEES FOR SERVICES NOT RENDERED; ILLEGAL FEES.

HISTORY. R.S. 1851 c. 73 ss. 37 to 39; P.S. 1858 c. 63 ss. 36 to 38; G.S. 1866 c. 70 ss. 30 to 32; G.S. 1878 c. 70 ss. 34 to 36; G.S. 1894 ss. 5584 to 5586; R.L. 1905 s. 2717; G.S. 1913 s. 5783; G.S. 1923 s. 7014; M.S. 1927 s. 7014.

If the deputy sheriff was satisfied that the information furnished him was true, it was his duty as a peace officer to make the arrest and for making it was entitled to the same fees as though it were made under a warrant, but being a public officers he could receive only the compensation allowed by law and is not entitled to the \$600.00 advertised reward. *Warner v Grace*, 14 M 487 (364).

The provisions of this section do not prevent in any proper case the collection in advance of the prescribed fees for the official service wanted, the purpose of the statute being only to prevent the exaction of fees larger than the law allows. *County v Magie*, 198 M 127, 269 NW 105.

357.30 TAXATION FOR SERVICES NOT RENDERED; PROSPECTIVE COSTS; ATTORNEY AS WITNESS.

HISTORY. R.S. 1851 c. 73 ss. 40, 41, 45; P.S. 1858 c. 63 ss. 39, 40 44; G.S. 1866 c. 70 ss. 33, 34, 36; 1877 c. 33 s. 1; G.S. 1878 c. 70 ss. 37, 38, 40; G.S. 1894 ss. 5587, 5588, 5590; R.L. 1905 s. 2718; G.S. 1913 s. 5784; G.S. 1923 s. 7015; M.S. 1927 s. 7015.

A defendant is entitled to witness fees only when it appears that he attended solely as a witness for his codefendants. *Barry v McGrade*, 14 M 286 (214).

357.31 FEES FOR COPIES; ITEMIZED LIST; FEES UNIFORM.

HISTORY. R.S. 1851 c. 77 ss. 44, 46, 48; P.S. 1858 c. 63 ss. 43, 45, 47; G.S. 1866 c. 70 ss. 35, 37, 38; G.S. 1878 c. 70 ss. 39, 41, 42; G.S. 1894 ss. 5589, 5591, 5592; R.L. 1905 s. 2719; G.S. 1913 s. 5785; G.S. 1923 s. 7016; M.S. 1927 s. 7016.

A sheriff or constable is entitled to mileage for traveling to serve a criminal warrant, although if by no fault of his he fails to serve it. *Davis v County*, 37 M 491, 35 NW 364.

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357.32 FEES OF WITNESS IN CRIMINAL CASES; WHEN AND HOW PAID.

HISTORY. R.S. 1851 c. 73 ss. 49 to 52; P.S. 1858 c. 63 ss. 48 to 51; G.S. 1866 c. 70 ss. 39 to 42; G.S. 1878 c. 70 ss. 43 to 46; G.S. 1894 ss. 5593 to 5596; R.L. 1905 s. 2720; G.S. 1913 s. 5786; G.S. 1923 s. 7017; M.S. 1927 s. 7017.

Witnesses for the state in a criminal case are entitled to fees and mileage which may be taxed in the costs. *State v Bliss*, 21 M 458.

When the defendant in a criminal action in justice court is acquitted, the county is not liable for the fees of an officer for service of a subpoena upon a witness for the defense. *Hendershott v County*, 45 M 281, 47 NW 810.

If the process is regular and valid on its face, a ministerial officer such as constable or sheriff is bound to serve the paper and may collect his fees for so doing, notwithstanding any knowledge he may have outside of the face of the process affecting the validity of the proceedings; but if the process is not valid on its face he is not entitled to fees from county for making service. *Dean v Board*, 50 M 232, 52 NW 650.

Where a judge of the district court determines that a county attorney is disqualified and directs another attorney to conduct the prosecution, the substitute is entitled to receive compensation, under the court's appointment, from the county where the crime is alleged to have been committed. *Matthews v Board*, 90 M 348, 97 NW 101.

357.33 FEES PUT IN COUNTY TREASURY.

HISTORY. R.L. 1905 s. 2721; G.S. 1913 s. 5787; G.S. 1923 s. 7018; M.S. 1927 s. 7018.

This section does not apply to cash balance deposited with the clerk and paid over to the treasurer, resulting from a properly vacated forfeiture of bail. *Edwards v County*, 116 M 101, 133 NW 469.

Since the enactment of the uniform naturalization laws by congress in 1906 clerks of court, under advice of the attorney general, shall retain one-half of the fees collected by the naturalization proceedings; this construction having continued for 20 years is controlling and the courts at this late date will not depart from it. *County v Ryberg*, 168 M 385, 210 NW 105.

When a fee office has by statute been put upon salary basis its fees are made public property, and the sheriff of St. Louis county being a salaried official has no official interest in fees earned by him, but he is by virtue of his office a trustee in respect to the fees whether collected or not, and it held to a strict accountability in the exercise of his duties in collecting such fees. *County v Magie*, 198 M 127, 269 NW 105.

The county treasurer is not entitled to a fee for preparing tax lists for banks desiring to remit taxes for their customers. OAG May 19, 1933.

The statute limiting the mileage and compensation of members of a county board is controlling, although under the federal loan act their duties are increased beyond 12 meetings per year. OAG April 19, 1937 (833k).