CHAPTER 19

Sheriffs’ Fees and Accounting With Successor

ARTICLE 1

Fees

**SECTION 23‑19‑10.** Fees of sheriffs generally.

 Except as otherwise expressly provided by general law, the fees and commissions of sheriffs are as follows:

 (a) There must be paid as commissions on all monies collected by the sheriff of a county, if under five hundred dollars, seven and one‑half percent, and, if over that amount, seven and one‑half percent on the first five hundred dollars and three percent on the balance above that amount.

 (b) For service of any civil process, not otherwise herein specified, the fee is fifteen dollars for each initial service and five dollars for each attempted service thereafter. However, the sheriff may not charge for more than two attempted services on the same matter so that the party, or his attorney, making the service in the matter may not be charged any more than a maximum total of twenty‑five dollars, namely, for two attempted services and one initial or actual service.

 (c) For claim and delivery, writs of assistance, distress warrants, orders of seizure, and executions, including all procedural matters related to these processes, the fee is twenty‑five dollars.

 (d) For mechanics’ liens, attachments, citations, decrees, summons, and complaints, the fee is fifteen dollars for each initial service and five dollars for each attempted service thereafter; however, the sheriff may not charge for more than two attempted services on the same matter so that the party, or his attorney, making the service in the matter may not be charged any more than a maximum total of twenty‑five dollars, namely, for two attempted services and one initial or actual service. For each subpoena writ, the fee is ten dollars for each initial service and five dollars for each attempted service thereafter; however, the sheriff may not charge for more than two attempted services on the same matter so that the party, or his attorney, making the service in the matter may not be charged any more than a maximum total of twenty dollars, namely, for two attempted services and one initial or actual service.

 (e) All additional expenses incurred as a necessary part of the service set forth in items (a), (b), (c), and (d), including, but not limited to, towing fees, wrecker service, storage fees, and fees for publication must be charged at actual cost in addition to the fees set forth above. For the service or execution of papers issued by a magistrate, the sheriff or his deputy serving or executing the same is allowed the same fees as are allowed to constables.

 (f) All monies collected under this section must be deposited into the treasury of that county employing the sheriff collecting those monies.

 The provisions of this section do not apply to criminal processes or cases.

HISTORY: 1962 Code Section 27‑401; 1952 Code Section 27‑401; 1942 Code Section 4950; 1932 Code Section 4950; Civ. C. ‘22 Section 5753; Civ. C. ‘12 Section 4230; Civ. C. ‘02 Section 3118; G. S. 2437; R. S. 2561; 1894 (21) 971; 1898 (22) 740; 1905 (24) 879; 1922 (32) 917; 1932 (37) 1122; 1936 (39) 1416; 1945 (44) 208; 1985 Act No. 163, Section 1; 1986 Act No. 397, Section 1; 1987 Act No. 66, Section 1.

CROSS REFERENCES

Collection against liens for past due child support, fees for seizure or levy of property, see Sections 63‑17‑2710 et seq.

Computation of mileage, see Section 8‑21‑20.

Fee and mileage for executing a warrant for ejectment of a trespasser, see Section 15‑67‑630.

Fees for summoning freeholders to serve as jurors in proceedings for release of debtors from civil arrest, see Section 15‑17‑540.

Library References

Sheriffs and Constables 28 to 76.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 469 to 513.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 29, Service of Process Expenses.

Attorney General’s Opinions

A sheriff’s department which has the resources to provide drug‑sniffing dogs to a school district must do so free of charge. S.C. Op.Atty.Gen. (Oct. 11, 2011) 2011 WL 5304079.

The absence of any express authority to charge a fee for the costs incurred for processing evidence, a sheriff who has the resources to provide such a service to a private security agency must do so free of charge in a criminal case. S.C. Op.Atty.Gen. (March 16, 2011) 2011 WL 1444710.

Pursuant to 1985 Act No. 163, which amended Section 23‑19‑10, sheriffs are required to turn over to county all fees and commissions collected by them, but it is doubtful whether amounts equivalent to fees and commissions previously retained by sheriff as part of his compensation may be withheld by county council from sheriff’s compensation; because compensation of sheriffs cannot be reduced during their terms, amounts equivalent to those fees and commissions retained prior to enactment of Act No. 163 should be reimbursed to sheriff by county council as part of his compensation. 1985 Op. Atty Gen, No. 85‑96, p 271.

Better reading of 1985 Act No. 163, which amends Section 23‑19‑10, supports construction that such Act provides uniform statewide fee schedule for sheriffs; therefore, all prior provisions in special laws authorizing fees and commissions in conflict with such Act should be considered to have been repealed. 1985 Op. Atty Gen, No. 85‑94, p 264.

Sheriff or his deputy executing process issued by magistrate’s court should continue to collect fees typically collected by magistrates’ constables, at least until Legislature has opportunity to clarify Sheriff’s general fee schedule established by 1985 amendment of Section 23‑19‑10. 1985 Op. Atty Gen, No. 85‑103, p 286.

Until General Assembly clarifies 1985 Act No. 163, better reading of subsection (6) of such Act is that Sheriff is authorized to collect total fee of $10 for executing writ of execution, including service thereof. 1985 Op. Atty Gen, No. 85‑106, p 300.

The sheriff is made responsible for transporting prisoners to the county jail from general sessions and the county court by necessary implication from subdivisions (13) and (14). 1965‑66 Op. Atty Gen, No. 2044, p 122.

NOTES OF DECISIONS

In general 1

Storage costs 2

1. In general

For additional related cases, see Morris v Buist (1914) 98 SC 415, 82 SE 675. Barr v Barr (1909) 82 SC 573, 64 SE 858. Gilreath v Greenville County (1905) 70 SC 389, 50 SE 18. Whittle v Saluda County (1901) 59 SC 554, 38 SE 168. Carson v Sumter County (1890) 32 SC 121, 10 SE 875. Smith v The Morgan City (1889, DC SC) 39 F 572.

As to fees for dieting prisoners, see Gilreath v Greenville County (1902) 63 SC 75, 40 SE 1028. Dean v Spartanburg County (1900) 59 SC 110, 37 SE 226.

This section does not apply to process from magistrate’s court. Green v Anderson County (1900) 56 SC 411, 34 SE 691. Whittle v Saluda County (1900) 56 SC 505, 35 SE 203.

Sheriff is allowed one dollar for executing a warrant on all the witnesses named in it, not one dollar for arrest of each witness. Whittle v Saluda County (1900) 56 SC 505, 35 SE 203. Lancaster v Barnwell County (1894) 40 SC 445, 19 SE 74.

Where process was executed in several cases on one trip, mileage was allowed in each case. Green v. Anderson County (S.C. 1900) 56 S.C. 411, 34 S.E. 691.

Where section provides that the sheriff shall be paid “for selling land,” etc., it applies only to cases where the sheriff acts merely as auctioneer. Williams v. McLendon (S.C. 1895) 44 S.C. 174, 21 S.E. 616.

This section does not apply to witness warrants issued by trial justice. Lancaster v. Barnwell County (S.C. 1894) 40 S.C. 445, 19 S.E. 74.

2. Storage costs

Storage costs of $3.50 per unit per day charged by commercial mobile home dealer for storage of attached mobile homes was reasonable and necessary, where county lacked adequate county‑owned facilities for storage. Bank Repossessions v. Mobile America Corp. (S.C. 1977) 268 S.C. 622, 235 S.E.2d 709.

While sheriff has duty to obtain storage of attached property at reasonable cost, nevertheless, owner has duty to protect his property. Bank Repossessions v. Mobile America Corp. (S.C. 1977) 268 S.C. 622, 235 S.E.2d 709. Creditors’ Remedies 269

Sheriff of Lexington county entitled to charge actual cost of storage of attached mobile home in privately‑owned facility where county does not have appropriate county‑owned storage facilities. Bank Repossessions v. Mobile America Corp. (S.C. 1977) 268 S.C. 622, 235 S.E.2d 709.

No duty exists to make reasonable effort to lessen storage costs where sheriff has obtained storage for attached property at such rates as are reasonable and necessary. Bank Repossessions v. Mobile America Corp. (S.C. 1977) 268 S.C. 622, 235 S.E.2d 709.

**SECTION 23‑19‑20.** County and municipality charge for federal prisoners.

 (A) The sheriffs or jailers of the respective counties of this State may charge an amount per day as provided by contractual agreement with the appropriate federal authority for each person committed to the county jail or another detention facility as a pre‑trial federal detainee, pending a judicial hearing or action, as a federal prisoner in transit from or awaiting transfer to another institution, or as a federal inmate serving a sentence imposed by the United States courts.

 (B) A contract with the appropriate federal authority for the housing of federal detainees, prisoners, or inmates by a county of this State must also be signed by the sheriff if he is responsible for operating the county jail or detention facility.

 (C) A municipality which operates a jail or detention facility may charge an amount per day as provided by contractual agreement with the appropriate federal authority for each person committed to the jail or detention facility as a pre‑trial federal detainee pending a judicial hearing or action, as a federal prisoner in transit from or awaiting transfer to another institution, or as a federal inmate serving a sentence imposed by the United States courts.

 (D) Any expenditure of the monies contained in this section must be made in accordance with the established procurement procedures of the local government having budget appropriation authority for the jail or detention facility.

HISTORY: 1962 Code Section 27‑402; 1952 Code Section 27‑402; 1942 Code Section 4951; 1932 Code Section 4951; 1926 (34) 973; 1933 (38) 236; 2002 Act No. 283, Section 1.

CROSS REFERENCES

Keeping prisoners committed by United States, see Section 24‑5‑60.

Library References

Sheriffs and Constables 35.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 490 to 492.

ARTICLE 3

Accounting with Successor

**SECTION 23‑19‑110.** Furniture, books, papers and other property.

 Every sheriff and, if any sheriff be dead, his personal representatives shall turn over to his successor all the furniture appertaining to his office, the original writ book and sale book and the original execution book or a correct certified copy thereof and also all original bonds officially taken by him, all mesne processes not served and all final processes partially or wholly unexecuted. Such successor shall be bound to execute a receipt and a duplicate to be lodged in the clerk’s office, specifying the matters and things so received by him and shall be responsible for them. Any such retiring sheriff who has levied upon personal property and not sold it, or his representatives if he be dead, shall deliver any such personal property to his successor at the time of turning over such books, bonds and processes, taking his receipt for it. Such successor may sell such property. The retiring sheriff or his successor neglecting or refusing obedience to the requisitions herein shall, respectively, upon conviction by indictment, be liable to a fine of one thousand dollars or an action may be instituted upon the official bond of any defaulting sheriff in this behalf, for the penalty aforesaid.

HISTORY: 1962 Code Section 53‑231; 1952 Code Section 53‑231; 1942 Code Section 3512; 1932 Code Sections 1536, 3512; Civ. C. ‘22 Section 2055; Cr. C. ‘22 Section 483; Civ. C. ‘12 Section 1162; Cr. C. ‘12 Section 556; Civ. C. ‘02 Section 838; Cr. C. ‘02 Section 399; G. S. 657; R. S. 316, 718; 1791 (7) 263; 1839 (11) 40; 1859 (12) 788.

NOTES OF DECISIONS

In general 1

1. In general

For related cases, see Osborne v Huger (1791) 1 SCL 179; State v Kennedy (1849) 36 SCL 160.

**SECTION 23‑19‑120.** Commissions on moneys collected and turned over to successor.

 The retiring sheriff shall be entitled to retain only one half of the commission allowed by law on moneys collected and turned over to his successor under the provisions of Sections 8‑9‑30 and 8‑9‑40 and his successor the other half for paying out such moneys.

HISTORY: 1962 Code Section 53‑232; 1952 Code Section 53‑232; 1942 Code Section 3514; 1932 Code Section 3514; Civ. C. ‘22 Section 2057; Civ. C. ‘12 Section 1164; Civ. C. ‘02 Section 840; G. S. 695; R. S. 720; 1859 (12) 788.

**SECTION 23‑19‑130.** Penalties for failure to pay over moneys.

 If a retiring sheriff or his successor neglects or refuses obedience to any of the requisitions contained in Section 8‑9‑30, he and the sureties to his official bond shall be liable to pay to the person entitled to receive such money the amount due to such person with interest thereon from the time such successor shall assume the duties of his office at the rate of five per cent per month until the whole amount shall be paid, to be recovered by action.

 The retiring sheriff or his successor neglecting or refusing obedience to any of the requisitions contained in said section shall, respectively, upon conviction be liable to a fine of one thousand dollars and imprisonment not exceeding twelve months.

HISTORY: 1962 Code Section 53‑233; 1952 Code Section 53‑233; 1942 Code Section 3515; 1932 Code Sections 1538, 3515; Civ. C. ‘22 Section 2058; Cr. C. ‘22 Section 485; Civ. C. ‘12 Section 1165; Cr. C. ‘12 Section 558; Civ. C. ‘02 Section 841; Cr. C. ‘02 Section 401; G. S. 694, 695, 696; R. S. 318, 721; 1859 (12) 788.

NOTES OF DECISIONS

In general 1

1. In general

This section omits the element of intention to defraud, but is apparently not unconstitutional as violating the constitutional provision preventing imprisonment for debt except for fraud. State v. Moore (S.C. 1924) 128 S.C. 192, 122 S.E. 672.

**SECTION 23‑19‑140.** Entries of collections in predecessors’ cases.

 Whenever a sheriff shall collect moneys in cases that have been entered in the books of his predecessors, he shall enter such cases in his own execution book, with an account of the money so collected.

HISTORY: 1962 Code Section 53‑234; 1952 Code Section 53‑234; 1942 Code Section 3543; 1932 Code Section 3543; Civ. C. ‘22 Section 2086; Civ. C. ‘12 Section 1193; Civ. C. ‘02 Section 868; G. S. 699; R. S. 747; 1859 (12) 789.