

subject of arrangement between themselves, and it is scarcely likely that any man would be willing to take all the responsibility of the marshal's office, let his deputies perform the labor in the field, taking the entire compensation, leaving him under heavy bonds liable for their acts, and receive nothing. This being the case, it is the custom for every marshal in the United States, and has always been, to employ his deputies on such terms as is agreeable to themselves. This the treasury department and the department of justice have always sanctioned and it is the universal custom.

It is well known that the fees provided by law for the service of process are but a trifle—they would not pay for the washing that one change of clothes a week would demand in this land of dirt; but the statute provides that in lieu of mileage, while travel is required in serving process, the officer may have actual expenses. If the officer hires the means of traveling it is the cost paid for horse or team (if there be one) and subsistence, and, if he has his own teams or horse, the reasonable price for the use. The prices of such things of course vary with the locality and circumstances, and because of this variance a rate was fixed, and at the department and by the officers these prices have always been fixed in the territories so as to provide such compensation as will insure faithful service and prompt attention to duty. Whether this construction of the law be correct it is not for me to say. It was at least reasonable. It has been adopted by the department as the rule for all these western territories, and if any other were prescribed it would result in vacating every marshal's office in the west. If for instance the officer could, on a two days' trip into Tooele county to serve a warrant for the arrest of a "cohab," in no event receive anything except the two dollars fee which is given for serving the warrant, and nothing whatever if he failed to catch his game (for in such case he gets nothing); how long would any man remain in the service? The report of the grand jury claims this is the proper construction of the law—allowing expenses to the officer in lieu of mileage. Now, to avoid such a hardship and to insure fair treatment to the officer, the department has always made such allowance for team hire as would be just, and they could do no less without ruin to the public service.

I have only to appeal to the common knowledge of the condition of things in this Territory to satisfy any reasonable person that to interpret the law as the grand jury would have it would work a ruinous result in the execution of the laws. Whilst I was the United States marshal (about three years) there were about one thousand persons arrested or convicted for unlawful cohabitation. The fee for making all these arrests is \$2 each, and the small pittance of 50 cents each for subpoenaing witnesses, making my compensation in three years probably about

two thousand five hundred dollars in those cases; but if I have a warrant and fail to serve it, the law provides no compensation whatever. If instead of mileage (which is practically nothing and is never accepted unless for travel on railroad) I am not allowed anything but the fee, it is easily seen that the office would be practically paralyzed. When it is known that all arrests for this popular offense are resisted and evaded by every device which the parties can adopt to evade the pursuing hand of the law, the application of the rule suggested by the grand jury needs no comment to prove its fatal consequences to the public service. It was in fact only upon the construction of the law by the department in allowing for team and subsistence that the execution of the Edmunds act has been possible. If the officer had been compelled to rely upon the fees alone for such service, the suppression of these crimes in Utah, which has placed this Territory on the highway of reform and progress, could never have had even their inception. So obvious was this, that the department at Washington allowed my immediate predecessor \$15 per day for the use of a team and subsistence. That was reduced to \$10 and then to \$8 after I came into office, but when the comptroller, Mr. Durham, had the circumstances explained to him, and was made acquainted with the necessity of it, it was restored to \$8 per day for team and \$2 for subsistence. This enabled me to retain efficient men in my service as deputies, and make the work fairly remunerative. I will state, however, that in no year of my administration did the income ever reach the limit fixed by law.

The grand jury say that it was the intention of the comptroller in fixing the price of team and subsistence at a per diem, that if the actual expenses paid were less than that, it was to be the less amount. The grand jury, not having examined Judge Durham, probably relied for this conclusion on the district attorney's opinion of the comptroller's intentions; when the truth is (as I can state from personal knowledge) that this amount was fixed in order to meet the very condition of things which then prevailed in Utah, and to enable the marshal to execute the law. The assertion that allowances in such cases were to be limited to "actual disbursements," by the officer and was only a limitation on these is an assertion without any fact to sustain it.

The comptroller saw when the matter was considered by him that by fixing a reasonable compensation for use and subsistence of team—not more than would be reasonable if the same had been hired from those who kept them for hire, and allowing the marshal to furnish the team either himself or by his deputies—the end of securing good service could be realized. When it had been reduced to \$6 before that, instead of \$8 per day, the deputies declared they would no longer stay in office, and then the rate was fixed

after careful deliberation in the way and for the reasons stated.

If it should be held that because a deputy who owns his team consents that the marshal may retain a portion of his hire it shall be inferred that the actual cost of the team is only what is paid to the deputy, then the compensation or cost is not regulated by any rule except the payment or disbursement of money; and if the deputy chooses to ride instead of walk, not having paid money, he would not be entitled to anything, because he paid out no money.

I will add a few things further in this connection. Very much service is required of the officers for which no compensation is allowed; unless, for instance, the officer actually serves his warrant he has no fee or compensation in any form. In this Territory it has repeatedly occurred while I was marshal, that in endeavoring to arrest skulking defendants I had to employ a large force to make nocturnal or other raids on indicted parties. In a single year my expenses for such efforts amounted to nearly one thousand five hundred dollars, not one dollar of which could I make claim to have returned, because I failed to make the arrests. It also became absolutely necessary in some instances to employ persons to furnish to me information for which payment I had to appeal to my own pocket. If my deputy could not divide the compensation with me and was entitled only to actual disbursements on teams, and I could only have the 40 per cent of the two dollar fee on each arrest, what must have been the result on the marshal's office? It would have gone begging for some one who was willing to take it for the territorial business. It gave him, and the laws of the United States would have gone unexecuted and unenforced. There are many things in this report that I regard more on account of the spirit of fault finding they evince than for the imputation and criticisms themselves. Candid and fair criticism of a public officer is right, but petty nickel-hunting about little things, and shallow reflections, the result of ignorance, are a trial to a man's patience. The bulk of the matters which are complained of while I was in office is presented in a way that indicates they were collected by some one who had a personal grievance and sought to gratify his malice more than to improve the public service. The grand jury contained no member to my knowledge except possibly one to whom I could impute the slightest desire to do me an injustice, and I acquit all others of any such purpose. I append hereto some correspondence between that member and the ex-turnkey of the penitentiary, who is known as an honest man, and leave the public to judge between us.

Finally closing this necessarily tedious refutation, I desire to say that I have resided in Utah many years. It is my home, and of the community I expect always to be one while I live. I have striven, whether in place or out of it, to so