

State Game Warden, Expenses and Fees Of—Deputy Game Warden Expenses and Mileage Of.

The state game warden is entitled to his actual and necessary expenses, not to exceed \$1,500.00 per annum, except when performing any official service which might be performed by a sheriff, then instead of receiving actual and necessary expenses he shall receive the same fees allowed the sheriff for such services and five cents per mile for each mile traveled in the performance thereof.

Special deputy game wardens, when performing official services in their own districts are not allowed anything for expenses, their salary being in full for services and expenses, except when the service performed in their own district is such as might have been performed by a sheriff, then they receive the same fees as the sheriff and five cents per mile for the distance traveled in performing the service.

Special deputy game wardens when performing services outside of their own district receive actual and necessary expenses incurred by them outside of their district, but for such service they are not entitled to the five cents per mile, even when the services are such as might have been performed by a sheriff.

The board of examiners has authority to demand that vouchers and itemized statements accompany claims filed, and may refuse to allow any claim until the same are so filed.

It rests in the sound discretion of the state game warden as to when he will send a deputy into another district to perform services therein. Whenever he deems it necessary for the better enforcement of the game and fish laws he may do so.

Helena, Montana, June 23, 1905.

Hon. A. N. Yoder, Secretary of State, Helena, Montana.

Dear Sir: Your letter of the 20th instant to hand, the following questions being therein submitted for our opinion to you as a member of the state board of examiners, to-wit:

"1. What is the game and fish warden entitled to by way of expenses and other emoluments pertaining to his office?"

"2. What are deputy game and fish wardens entitled to while working in their own districts, and is it competent for the game and fish warden to send his deputies from one district to another."

You further state:

"3. I would like you to construe the law fully as to mileage or any emoluments that they may be entitled to; whether it is necessary and competent in all cases for them to exhibit vouchers to the examining board for the payment of such expenses, and if, under the law, the examining board is allowed to pay any expenses where proper vouchers do not accompany the bill."

An opinion was given by my predecessor in office to Mr. W. F. Scott, state game and fish warden, on August 18, 1903, construing the sections of our statute relative to the questions by you submitted. After a careful examination of the law, and said opinion, we are unable fully to agree with the conclusions therein reached.

Section 6, laws of 1901, p. 131, as amended by Chapter 38, laws 1903, p. 54, provides that the state game and fish warden shall receive \$1,800 per annum salary and shall receive actual and necessary traveling expenses and other actual and necessary expenses not to exceed, however, the sum of \$1,500 per annum. Section 12, laws 1901, p. 132, as amended by Chapter 38, laws 1903, p. 55, provides that "the special deputy game and fish wardens appointed by the state game and fish warden shall receive as compensation for their services pay at the rate of \$1,200 per annum, which shall be in full for their services and expenses incurred in their own district, the same to be made in monthly payments at the end of each month." It should be noted here that that part of said Section 12, as amended which is quoted above, is the same as it was originally enacted in the law of 1901, p. 132. Under said Section 6, as amended, the state game and fish warden receives \$1,800 per annum salary and actual and necessary expenses to an amount not exceeding \$1,500, and under that part of said Section 12, as amended, quoted above, special deputy game and fish wardens receive \$1,200 per annum "in full for their services and expenses in their own districts." Said Section 12, as originally adopted and quoted above, had the following proviso added to it by said amendment of 1903, (Chapter 38, p. 55); to-wit:

"Provided that in any case where it shall become necessary in the performance of his official duties for the state game and fish warden or any special deputy game and fish warden appointed under the provisions of this act, to perform any service such as might be performed by a sheriff or other peace officer, he shall be entitled to receive for his own use and benefit the same fees and 'five cents per mile travelled in the performance of his duties,' within his own district as if such service were performed by the sheriff of the county in which the service is performed, such fees and mileage, to, be paid out of the state fish and game fund when approved by the state board of examiners."

By this amendment to Section 12 it is provided that when it becomes necessary in the performance of official duties for the state game and fish warden, or any special deputy game and fish warden, "to perform any service such as might be performed by sheriff or other peace officer," then, and in such event, "he shall be entitled to receive for his own use and benefit the same fees and 'five cents per mile traveled in the performance of his duties,' within his own district as if such service is performed by the sheriff of the county in which the service is performed." It is clear from the language in said amendment to said Section 12 that the only official service for which the state game warden, or any of his deputies, are allowed to collect fees and five cents per mile mileage are such services as might be performed by a sheriff or other peace officer and for which such sheriff or peace officer would be legally entitled to collect fees or mileage.

Sections 4 and 7, laws 1901, p. 131, define, in the following language, the services that may be performed by the state game warden or his deputies, which might also be performed by the sheriff, to-wit: "He is vested throughout the state with all the powers of a sheriff in making arrests and in the prosecution of all offenses against the game and fish laws of the state."

To illustrate: After a complaint has been filed charging a person with violation of the game and fish laws, and a warrant has been issued, the state game warden, or any deputy in his own district, may serve such warrant, and would be entitled to the fee of \$1.00 for serving the warrant, the same as allowed a sheriff for performing such service, and would be entitled to five cents per mile for each mile actually and necessarily traveled, after receiving the warrant, in making arrest thereon, and would also be entitled to five cents per mile for himself and prisoner for each mile actually and necessarily traveled in returning with the prisoner to the justice who issued the warrant; or if in the performance of the regular duties of examining and inquiring into violations of the game and fish law the state game warden or any deputy in his own district should discover a person violating, or attempting to violate, the game and fish law, under such circumstances as would justify a sheriff or peace officer in making an arrest without first procuring a warrant, then, and in such event, the state game warden or his deputy would be authorized to arrest such person without a warrant, and from the time of arresting him he would be entitled to five cents per mile for himself and prisoner for each mile actually and necessarily traveled from such point to the nearest and most accessible magistrate before whom a complaint could be made, and would also be entitled to the fee for serving the warrant, when issued, upon such prisoner. But it is only when performing such services as might be performed by the sheriff that the fees allowed a sheriff and five cents per mile can be charged. When the state game warden is traveling about the state in the performance of his official duties, other than those that might be performed by a sheriff, he can only collect his actual and necessary traveling expenses, which must not exceed \$1,500 per annum, while a deputy game warden while performing his official duties in

his own district, other than those services that might be performed by a sheriff, is not entitled to any allowance whatever for expenses, his salary of \$100 a month being in full for services and expenses.

To illustrate: A trip along a stream to ascertain if proper fish-ways are placed over the dams, or a trip to a saw mill to examine into the disposition of the sawdust, where no warrant of arrest has been placed in his hands, would simply be the regular official performance of duty for which the state game warden could only receive, in addition to his salary, his actual and necessary expenses, and for which a deputy game warden, if the services were performed in his own district, would not be entitled to any allowance for expenses at all, as his salary is in full for such services and expenses. When a deputy game warden, under the circumstances mentioned, in Section 13, laws 1901, p. 132, is sent by the state game warden to another district than his own, then he is entitled to receive his actual and necessary expenses while performing official services outside of his own district. However, when a deputy game warden is performing official services outside of his own district he can only collect actual and necessary traveling expenses, even if the services are such as might be performed by a sheriff; for said Section 12, as amended, provides that a deputy game warden "shall be entitled to receive for his own use and benefit the same fees and five cents per mile traveled in the performance of his duties within his own district," and said Section 13 expressly provides that a deputy game warden, when outside his district, "shall receive actual and necessary expenses incurred by him while traveling outside of his district."

As to vouchers accompanying the claims, you certainly have the right to require a voucher for each item of actual and necessary expenses claimed by the state game warden, or by a deputy game warden where he is entitled to actual and necessary expenses for services performed outside his own district, and where the state game warden, or a deputy within his own district, claims fees and mileage for the performance of services that might have been performed by a sheriff, you have the right to require an itemized statement of the cases in which the arrests were made and the points from which they traveled in making the arrest and from which they traveled in returning with the prisoner. The state board of examiners have authority to demand the facts and data necessary to intelligently examine, check up and audit any claim filed against the state, and can refuse to allow any claim until such necessary data is furnished by the claimants.

In conclusion, you are advised:

1. That the state game warden in the performance of official duties is entitled to his actual and necessary expenses, not to exceed \$1,500 per annum, provided that when he performs any official service which might be performed by a sheriff, then instead of receiving his actual and necessary expenses he shall receive the same fees allowed the sheriff for such services and five cents per mile traveled in the performance of such services, this mileage being in lieu of his actual and necessary expenses incurred in performing such services.

2. Special deputy game wardens when performing official services in their own district are not allowed anything for expenses, their salary of \$100 per month being in full for services and expenses, except when the service performed in their own district is such as might have been performed by a sheriff, then they shall receive the same fees as would be allowed the sheriff for such service, and five cents per mile for the distance traveled in performing such service in their own district.

3. Special deputy game wardens, when performing services outside of their own district, receive actual and necessary expenses incurred by them outside their own district, but when performing services outside their own district they are not entitled to the five cents per mile traveled, even if the services are such as might have been performed, by a sheriff, the actual and necessary expenses received by them being in lieu of the five cents a mile.

4. The board of examiners has authority to demand that vouchers and itemized statements accompany claims filed, and may refuse to allow any claim until the same are furnished.

5. It rests in the sound discretion of the state game and fish warden as to when he will send a deputy into another district to perform services therein. He may do so whenever he deems it necessary for the better enforcement of the game and fish laws.

ALBERT J. GALEN,
Attorney General.