

**Mileage of Sheriff—Mileage of Deputies Accompanying Sheriff.**

A Sheriff cannot legally charge mileage for deputies that he takes with him to make an arrest.

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 Superintendent of Banks,  
 Helena, Montana.

My dear Mr. Skelton:

You have submitted to this office the following question:

“Where a Sheriff takes with him two or more deputies to arrest one or more prisoners, can he collect mileage for the deputies?”

Section 3137 of the Revised Codes of 1907 provides:

“While in the discharge of his duties both civil and criminal, except as hereinbefore provided, the Sheriff shall receive Ten Cents per mile for each and every mile actually and necessarily traveled \* \* \*.”

While it might reasonably require the services of one or more deputies to make an arrest, yet the statute evidently provides for only one mileage covering the distance actually traveled.

As was said in the case of *Proctor v. Cascade County*, 20 Mont. 315, 317:

“The actual expenses of transporting a violently insane person may often exceed 10 cents per mile, while ordinarily such an allowance would be a liberal one. Doubtless consideration of such varying charges prompted the legislature to establish a uniform rate as equitable and just in all cases.”

So in this case, it is clear that all the Legislature intended to allow was mileage for the distance actually traveled. The Legislature intended merely that a Sheriff should be indemnified for expenses actually incurred and not that he should make a profit by reason of the allowance of mileage. If mileage were allowable for deputies accompanying the Sheriff, it is readily apparent that the mileage would greatly exceed the actual expense and might become a means of making profit and be subject to abuse, since Sheriffs usually travel in automobiles and the expense is therefore no greater for two or three than for one.

It has, as you are aware, been frequently held by previous Attorneys General that a Sheriff having a warrant of arrest is entitled to mileage only when he serves the warrant, and opinions have been rendered treating of various cases in which the Sheriff is entitled to expenses only. (See Vol. 1, Opinions Attorney General, pp. 177, 195 and 222; Vol. 2, p. 244; Vol. 3, p. 138; Vol. 5, p. 40; Vol. 7, p. 141.)

It is, therefore, my opinion that, in cases when mileage is allowed to a Sheriff, mileage can not legally be charged for deputies that the Sheriff takes with him to make the arrest.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.