

the following paragraph of said House Bill No. 270:

"In addition to the fees above specified, the sheriff shall receive for each mile actually traveled, in serving any writ, process, order or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail, only his actual expenses when such travel is made by railroad, and when travel is other than by railroad he shall receive eight and one-half cents (8½¢) per mile for each mile actually traveled by him both going and returning, and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail, and he shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and dieting such persons during such transportation; provided that where more than one or more persons are transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged."

It will be observed that the statute provides that if mileage mentioned shall be paid "in serving any writ, process, order or other paper, including a warrant of arrest * * *." Since the sheriff did not serve the warrant for arrest he would not be entitled to the mileage provided in said House Bill 270. While there might be some difference of opinion, we consider this question was settled by the opinion of the Attorney General in Volume 1, Opinions of the Attorney General, p. 179, reaffirmed by a later opinion in Volume 4, Opinions of the Attorney General, p. 199. Since the practice of charging only reasonable expenses has been followed since such opinions were given, and the wording of the Act in this respect has not been changed by the legislature, I do not believe the practice should be changed. The sheriff would, therefore, be only entitled to recover his reasonable expenses. The same rule would apply as suggested in answer to your question No. 4 herein. See opinion No. 210, Volume 15, Opinions of the Attorney General, p. 146.

Opinion No. 67.

Sheriffs, Fees and Charges Of.

House Bill No. 270, Chapter 139, Laws of 1937, construed with reference to mileage to be charged and meals required by sheriff while serving or attempting to serve warrant of arrest. Where sheriff makes a trip and his fees are not fixed by statute as in making an investigation, he may recover reasonable expenses.

March 23, 1937.

Hon. S. L. Kleve
State Examiner
The Capitol

Dear Mr. Kleve:

You have requested my interpretation of House Bill No. 270, Chapter 139, Laws of 1937, and have asked the following questions, which are answered in the order submitted:

"1. If a sheriff has a warrant of arrest for a party and travels fifty miles by car in search of the man, during which time he eats a seventy-five cent meal in a town other than the county seat, does not find his man and returns fifty miles to his office, what charge should he make?"

The answer to this question depends upon the construction to be given to

"2. If a sheriff has a warrant for a man and travels fifty miles by car and finds his man, arrests him and returns fifty miles to his office, both eating a seventy-five cent meal en route, what then should his charge be?"

The sheriff would be entitled to the following:

Mileage 100 miles at 8½¢	
per mile	\$8.50
Meal for sheriff75
Mileage for prisoner 50 miles	
at 8½¢ per mile.....	4.25
Meal for prisoner75

The section above quoted expressly provides:

" * * * and he shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and dieting such persons during such transportation."

"3. If a sheriff has a warrant for three men, travels fifty miles to find them, arrests them, and returns fifty miles to his office, each of the prisoners and himself eating a seventy-five cent meal enroute, what would be the proper charge for the sheriff?"

In addition to the charges enumerated in the answers to questions No. 2 and 3, the sheriff would be entitled to the following:

Meal for second prisoner	\$.75
Meal for third prisoner75

The words last above quoted authorize the sheriff to charge his actual expenses for the person conveyed or transported but the following proviso, "provided that where more than one or more persons are transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged", places a limitation upon the mileage alone.

"4. If a sheriff goes out into the country to make an investigation, and returns to his office without making an arrest, but travels one hundred miles in all, what charge should he make, having eaten one seventy-five cent meal en route?"

This question is answered by opinion of the Attorney General, No. 210, in Volume 15, p. 146 of the Opinions of the Attorney General, which holds that where items of travel are not fixed by statute, the sheriff can recover his reasonable expenses and the power to determine what is reasonable is vested in the county commissioners and limited by the claims presented. We agree with the conclusion reached in that opinion.