

VOLUME NO. 34

Opinion No. 18

**SHERIFFS - Mileage and expenses for transporting persons in private vehicle. Section 16-2723, R.C.M. 1947.**

- HELD:**
1. A sheriff may charge 22c per mile for every mile traveled in the discharge of his duties in transporting a person by order of court in a private vehicle.
  2. No additional allowance may be claimed for additional personnel accompanying the sheriff.

October 5, 1971

Mrs. Diane G. Barz  
Deputy County Attorney  
County Attorney's Office  
Billings, Montana 59101

Dear Mrs. Barz:

I am in receipt of your letter concerning section 16-2723, Revised Codes of Montana, 1947. You have requested my opinion on the following questions:

1. Does this statute mean that the Sheriff can charge twenty-two cents (22c) per mile for every mile traveled in the discharge of his duties in transporting a person by order of court in a private vehicle?
2. Can the Sheriff also charge eleven cents (11c) plus the additional eleven cents for subsistence for the guard who rides along on these trips over and above the twenty-two cents (22c) allowed in 1. above?
3. Can there be any additional allowance above the total of twenty-two cents a mile for additional Sheriff personnel riding along on these trips?

I refer you directly to the pertinent portion of section 16-2723, R.C.M. 1947, which provides that a mileage rate shall be allowed a sheriff in the discharge of his duties if travel is by privately owned vehicle, as follows:

“While in the discharge of his duties, both civil and criminal, the sheriff shall receive eleven cents (11c) per mile for each and every mile actually and necessarily traveled; and for transporting any person by order of court, except as hereinbefore provided, he shall receive eleven cents (11c) additional per mile, the same to be in full for transporting and dieting of such person during such transportation; . . .”

Therefore, in answer to your first question, section 16-2723, R.C.M. 1947, provides that a sheriff can charge 22c per mile for every mile traveled in the discharge of his duties in transporting a person by order of court in a private vehicle.

Section 16-2723, R.C.M. 1947, also provides:

“... provided that where more than one person is 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. The county shall not be liable for, nor shall the board of county commissioners pay for any claim of the sheriff or other officer, for any other expense incurred in travel or for subsistence, in cases where mileage is allowed under this section; the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work.”

This provision of section 16-2723, R.C.M. 1947, clearly excludes any additional charge for a guard or any other personnel who accompany a sheriff in the discharge of his duties in transporting a person by order of the court in a private vehicle. In answer to your second and third questions, a sheriff cannot charge any additional amount above the twenty-two cents per mile authorized by section 16-2723, R.C.M. 1947, for subsistence or travel expense for additional sheriff's personnel accompanying the sheriff.

THEREFORE, IT IS MY OPINION that:

1. Section 16-2723, R.C.M. 1947, does allow a sheriff to charge 22c per mile for every mile traveled in the discharge of his duties in transporting a person by order of court in a private vehicle.
2. No additional allowance in excess of the 22c per mile provided for in section 16-2723, R.C.M. 1947, may be claimed for additional personnel accompanying the sheriff.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General