

**Mileage, of Sheriffs for Transportation of Persons to Insane
Asylum and State Penitentiary—Sheriffs, Mileage for
Transportation of Prisoners.**

Under authority of *Proctor v. Cascade County*, 20 Mont. 315, Sections 2977, of the Penal Code, and 2311, of the Political Code, are superseded by Section 4604, of the Political Code, and accordingly the sheriff should be allowed mileage instead of actual expenses for the transportation of prisoners, which constitutes a charge against the State.

Section 2977, of the Penal Code, is not repealed, so far as it

provides that such expense shall be paid by the State, and the State and not the county is liable for the fees and mileage of sheriffs for transporting prisoners to the penitentiary; but Section 2311, of the Political Code, in relation to the taking of insane persons to the State Asylum and making the expenses thereof a county charge, is, by implication, repealed by Section 4604, of the Political Code, so far as the fees and mileage for transporting insane persons is concerned, and the same constitutes a State charge.

January 24, 1905.

Hon. Charles Murray, Chairman, Committee on Appropriations, Helena, Montana.

Dear Sir:—In response to your request, I give you the opinion of this office upon the following question:

“Is there any authority for sheriffs to collect mileage from the State for taking persons to the insane asylum or state prison?”

Section 2311, of the Political Code, provides:

“The costs of the examination, committal and taking an insane person to the asylum must be paid by the county in which he resides at the time he is adjudged insane. The sheriff must be allowed the actual expenses incurred in taking an insane person to the asylum, and no more.”

And in relation to prisoners delivered to the state prison, Section 2977, of the Penal Code, provides:

“Sheriffs delivering prisoners at the state prison must receive all actual expenses necessarily incurred in their transportation, the amount of the expenses in each case to be audited and allowed by the board of examiners, and paid out of any moneys in the state treasury appropriated for that purpose, and no further or other compensation must be received by sheriffs for such transportation or services.”

These two general provisions in the Codes were adopted by the legislature upon the adoption of the Codes in 1895, but we find that at the same session of the legislature, by act approved March 15, 1895, the same being Section 4604, of the Political Code, it is provided:

“While in the discharge of his duties, the sheriff shall receive ten cents per mile for each and every mile actually and necessarily traveled, and for transporting any person by order of court he shall receive ten cents additional per mile, the same to be in full for transportation and dieting of such person during such transportation. 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 team or horse hire, or any other expense incurred in travel or for subsistence; the fees for mileage named in this section being in full for all such traveling expenses.”

The Supreme Court of this State, in the case of *Proctor v. Cascade County*, 20 Mont. 315, decided that Section 4604, last above quoted, expressly controls in all cases of fees allowed to a sheriff for transporting any person by order of court. The question under consideration in that case was whether Section 2311, of the Political Code, providing that sheriffs

shall receive from the county actual expenses only for transporting insane persons to the asylum, as therein provided, was repealed by virtue of said Section 4604.

The court, in its opinion in that case, says:

"The language is sweeping. It covers instances of prisoners transported to the penitentiary, of insane persons transported to the asylum, of persons transported in contempt proceedings, of witnesses transported under an order of court, or any other instance where such a service is to be performed. If the statute had used the words 'any prisoner,' the argument of limitation excluding cases of transportation of insane persons, if elsewhere provided for, would be reasonable; but by the unrestricted use of the word 'person' the manifest intention of the legislature was to provide a uniform rule of compensation to sheriffs in any and all cases where they are called upon to transport persons in obedience to orders of a court. We look upon Section 4604 as a subsequent statute covering the subject-matter of the transportation of any person by a sheriff under order of court, and as intended to be a substitute for Section 2311, and all other former statutes upon the subject. On principle, it therefore operated as a repeal of such previous statutes."

I should say, therefore, that Section 2311, of the Political Code, and Section 2977, of the Penal Code, relating to the subject of sheriffs fees, upon transporting persons to the insane asylum or state prison, are displaced by Section 4604, which defines what shall be allowed for transporting insane, as well as any other persons transported by order of court.

Section 2977, of the Penal Code, so far as it provides that the expenses of taking prisoners to the state prison shall be paid by the State, is not repealed, and the State and not the county is liable for the fees and mileage of sheriffs for transporting prisoners to the penitentiary; and Section 2311, of the Political Code, is, by implication, repealed by Section 4604 of the Political Code, so far as the same relates to the payment of the costs of transporting of insane persons to the state insane asylum.

Yours respectfully,

ALBERT J. GALEN,

Attorney General.