

Sheriff, Expenses in Getting Evidence.

Where the sheriff assists the county attorney in securing evidence for the prosecution of a criminal case he is entitled to his actual and necessary traveling expenses thus incurred.

Helena, Montana, Oct. 19, 1905.

Hon. W. D. Delphy, Chairman, Board of County Commissioners, Great Falls, Montana.

Dear Sir:—I am in receipt of your favor of the 16th, asking my opinion as to what pay the sheriff is entitled to under the law when rendering assistance to the county attorney in securing evidence for the prosecution of a criminal case.

In an opinion addressed to your deputy county attorney, P. J. Regan, on August 30, 1905, it was held by this office "that the sheriff is only entitled to mileage where he actually serves a warrant of arrest, or other writ, process, order, etc., and that when he travels in search of a person, either with or without a warrant, and fails to find such person, he cannot collect mileage for the distance so traveled." And it was further held by this office, on September 12, 1905, in a letter addressed to John H. Tolan, Esq., county attorney of Deer Lodge County, that "where the sheriff travels in search of a person with a warrant in his possession but does not serve the warrant, or where a crime has been committed and he, in good faith, travels in search of the guilty party before he has had time to have a warrant issued for his arrest, that he is entitled to his actual traveling expenses in the performance of such official duty, even though he does not find the party he is hunting for."

In line with the holdings above referred to, and upon the authority and reasoning thereof, I give you as my opinion that in a case such as you present, where the sheriff is engaged in assisting the county attorney in getting evidence in a criminal case, that he is entitled to, and should be paid by the county, only his actual and necessary traveling expenses thus incurred.

Yours respectfully,

ALBERT J. GALEN,

Attorney General.