

Deputy Sheriffs, Number Of. Sheriff, Appointment of Deputies By. Sheriff, Mileage Of. Mileage of Sheriff.

It is within the power of the Board of County Commissioners to fix the number of deputies sheriffs should be allowed in their counties.

Where a sheriff is entitled to mileage he can collect same

although he may travel on a pass. He is entitled to retain the mileage so collected, as no part of it belongs to the county.

Helena, Montana, Jan. 10, 1908.

Mr. O. C. Gasman,  
Chairman of Board of County Commissioners,  
Dillon, Montana.

Dear Sir:—

Your letter of the 6th inst., received, requesting an opinion from this office upon the following questions:

1. "What number of deputies can a sheriff of a Sixth Class County appoint, who can be placed upon the regular payroll and receive salary warrants at the same time as all other county officers?"
2. "Can a sheriff holding free transportation collect mileage when that transportation is used on a trip for which he claims mileage?"
3. "Is a sheriff entitled to full mileage when under regular salary, and, if so, is he supposed to turn in part of his mileage into the county treasurer with his regular report?"

We shall answer the above questions in order in which they are asked.

1. Under Section 4597, Political Code, as amended by Chap. 75, Laws 1905, the sheriff of a Sixth Class county cannot have more than one under sheriff and not to exceed one general deputy and one deputy who shall act as jailer, unless the board of county commissioners, pursuant to Chap. 178, Laws of 1907, determine that a greater number of deputies are needed for the faithful and prompt discharge of the duties of such office and make an order upon their minutes to that effect.

On the other hand, the board of county commissioners have authority to determine and fix the number of deputies they should allow a sheriff under Section 4597, as amended by said Chap. 75, Laws 1905, and by an order duly made in their minutes may fix the number in a Sixth Class County at less than one under sheriff and one general deputy, and one deputy who shall act as jailer.

See the recent decision of our Supreme Court in the case of Hogan vs. Cascade County, 92 Pac. 329, and cases therein cited.

It follows, of course, that only such deputies as were allowed by the board of county commissioners can be placed upon the payroll and receive warrants for their salary as other county officers.

2. In all the cases where a sheriff is entitled to mileage under Section 4604, as amended by Chap. 86, Laws 1905, he can collect same regardless of the fact that he may travel on free transportation, for it is an allowance in lieu of actual expenses, and it matters not how he travels, or what it costs him, he is entitled to ten cents, and no more, for each mile necessarily traveled.

But in case of delivering persons to the State Penitentiary, State Reform School, and the State Insane Asylum, where a sheriff, under Section 4604, as amended, is allowed only his "actual expenses necessarily incurred" he should not be allowed anything for railroad fare for himself when traveling on a pass.

Proctor vs. Cascade County, 20 Mont. 315.

Scharrenbroich vs. Lewis and Clark County, 83 Pac. 482.

3. The sheriff is entitled to full mileage for the distance necessarily traveled in the performance of any service for which he is allowed mileage instead of actual and necessary traveling expenses.

This mileage is an allowance covering his traveling expenses in such cases, and he should be allowed nothing for expenses other than ten cents per mile. In no case does any of his mileage go to the county, as it is intended wholly to reimburse the sheriff for expenses.

Your attention is called, however, to a former opinion of this office (Opinion of Attorney General 1905-'06, page 179), in which it was held that a sheriff is only entitled to mileage where he actually serves a warrant of arrest or other writ, process, order, etc., and where 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 is entitled only to actual and necessary expenses in such cases. (You can find this opinion in the county attorney's office.)

Very truly yours,

ALBERT J. GALEN,

Attorney General.