

Sheriff, Mileage for Serving Subpoenas. Mileage, Serving Subpoenas.

Where a sheriff receives subpoenas to be served on witnesses in another county in a criminal case his mileage is a proper charge against the county in which the action is pending.

Helena, Montana, April 22, 1908.

Hon. S. P. Wilson,
County Attorney,
Deer Lodge, Montana.

Your letter of the 13th inst., received, requesting an opinion upon the following question:

"In a criminal case in the district court, where a subpoena is issued for a witness who resides outside a county, and sent to the sheriff of the county in which the witness resides, for service, which county should pay the sheriff his mileage for serving the said subpoena—the county in which the action is pending, or the county whose sheriff made the service, and in which the service was made?"

You are advised that the county in which the offense was committed is liable for the sheriff's mileage in subpoenaing witnesses in such cases. In an opinion heretofore given it was held that it was the duty of the

sheriff of the county in which the case was tried to send subpoenas to the sheriff of the county in which the witnesses are to be subpoenaed, but this does not relieve the county that is primarily liable for the cost of prosecution of the case from the payment of mileage of such sheriff.

Mileage for subpoenaing witnesses under such circumstances is similar to the cost of the prosecution where there is a change of venue. In a case of a change of venue the county from which the action was transferred is liable for the sheriff's mileage of the county to which the case was transferred, where such mileage was occasioned by reason of the transfer of such case.

See: State ex rel Cascade County vs. Lewis and Clark County, 86 Pac. 419.

Very truly yours,

ALBERT J. GALEN,

Attorney General.