

**Appropriations, Claims of Sheriffs for Mileage.**

There is no constitutional objection to the legislative assembly passing a law for the payment of moneys due sheriffs under Section 4604 of the Political Code for transporting prisoners, and the fact that the Ninth Legislative Assembly has made appropriation for the payment of a part of the claims does not liquidate the obligation nor affect its legality.

Helena, Mont., Feb. 23rd, 1907.

Hon. William Scallon,  
Chairman, Committee on Judiciary,  
Helena, Mont.

Dear Sir:—

I am in receipt of your favor of the 22nd inst., enclosing House Bill No. 390, which is a Bill for an Act appropriating money for the payment of balance due on mileage allowed by law to sheriffs for transporting prisoners to the state prison during the years 1903-04. You state that your committee is desirous of securing an opinion from this office as to the constitutionality of the measure and the legality of the claims for which the appropriation is contemplated to be made by

said bill. I know of no constitutional prohibition against such an act and in my judgment the bill is constitutional. As to the legality of the claims for which the appropriation is contemplated by the act to be made, I am of opinion that the same are legal claims against the state of Montana. As reason for my opinion that they constitute legal claims against the State of Montana, permit me to say:

The sheriffs mileage for transportation of prisoners was authorized by Section 4604 of the Political Code, which law was in force and effect until March 3, 1903, at which time Chapter 86, laws of 1905, went into force and effect allowing sheriffs their actual expenses for the transporting of prisoners instead of mileage, and, under the decision of the Supreme Court in Proctor v. Cascade County, 20 Mont. 315, it is held that a sheriff is entitled to mileage instead of actual expenses for the transporting of prisoners to the state penitentiary under said section 4604 of the Political Code. These claims having been incurred under authority of Section 4604 of the Political Code before its repeal by said Chapter 86, laws of 1905, and having been duly and regularly approved by the State Board of Examiners as a legal claim against the State of Montana and certified to the legislative assembly, I know of no reason why appropriation should not be made for the payment of the balance of such claims, it appearing that the legislative assembly have not already made provision by appropriation for payment of the same in full. The mere fact that the Ninth Legislative Assembly acted upon the claims and made appropriation for allowance of such claims in part does not liquidate the obligation nor in any way prevent the Tenth Legislative Assembly from making appropriation with which to pay the balance due and owing to such sheriffs for services performed.

Respectfully submitted,

ALBERT J. GALLEN,  
Attorney General.