

Sheriff, Mileage of in Conveying Prisoner on a Wararnt of Arrest. Mileage, of Sheriff in Conveying Prisoner on Warrant of Arrest.

Where the sheriff arrests a party on a warrant and takes him before the authority issuing the warrant, he is transporting such person by order of court and is entitled to ten cents per mile for each mile actually traveled by himself and by the prisoner.

Helena, Montana, June 10, 1909.

Hon. W. S. Towner,
County Attorney,
Fort Benton, Montana.

Dear Sir:

I am in receipt of your letter of the 8th instant, in which you request an opinion upon the following question:

"Is the sheriff entitled to the actual expenses of conveying the prisoner before the magistrate as provided by the last paragraph of section 3167, of the revised codes of 1907, or is he entitled to receive ten cents a mile, the same to be in full for transporting and dieting such prisoner during such transportation, as provided by section 3137, of the revised codes?"

In our opinion section 3127, revised codes, by implication repeals the last paragraph of section 3167 of said code. In other words, in all cases except those of transporting prisoners to the state prison, or children to the state reform school, or insane persons to the insane asylum, the sheriff is entitled to ten cents per mile for each and every mile actually and necessarily traveled by himself, and for each mile actually and necessarily traveled by a prisoner in his custody under warrant of arrest, such mileage to include transportation, board and lodging of the prisoner, as well as that of the sheriff.

Where the sheriff has a warrant for the arrest of a person, and apprehends such person, and brings him to the magistrate, pursuant to the direction of such warrant, he has clearly

"transported such person by order of the court,"

and such order of court is not one of the orders excepted by the first part of said section 3137.

Very truly yours,
ALBERT J. GALEN,
Attorney General.