

**Mileage, of Sheriff in Inspecting Horses. Sheriff, Mileage of in Inspecting horses. Stock Inspector, Mileage and Fees of in Inspecting Horses.**

Where horses are to be shipped beyond the boundaries of the state, a stock inspector or sheriff is entitled to a fee of three dollars and actual expenses for inspecting the same.

When horses are shipped from one county to another in this state for purposes of selling the same, the sheriff or stock inspector is not entitled to any fee. The Stock Inspector's compensation therefor must be fixed by the Board of Stock Commissioners. The Sheriff, while not entitled to a fee is entitled to his mileage under Sec. 3137.

Helena, Mont., July 7, 1909.

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

Dear Sirs:

I am in receipt of your letter of the 2nd inst., requesting an opinion upon the following questions:

"When the county sheriff receives notice to make inspection of horses about to be shipped from the state, under the provisions of chapter 125, laws of 1907, is the sheriff entitled to mileage in going to the point of shipment from the county seat? If so, is this a legal charge against the county, or should the same be paid by the shipper?"

The laws relating to the inspection of horses, found in the revised codes, are taken from the session laws of 1901 and 1907. Sections 1804 to 1807, revised codes, are from the laws of 1901. Section 1804 provides that:

"It shall be the duty of any and all persons removing or taking from this state, any horses, etc., immediately before the shipment, to cause the same to be inspected by a stock inspector or the sheriff of the county from which the same is to be removed."

Section 1807 provides a fee of three dollars for such inspection, and also the actual and necessary expenses of the officer making the inspection.

Sections 1808 to 1811 are taken from the laws of 1907 and relate to horses, etc., moved from one county in this state to another, or beyond the boundaries of the state for the purpose of selling such stock or offering the same for sale at public sale. The act of 1907 contains no provision providing for a fee for making an inspection or for expenses. However, it is our opinion that whenever horses are shipped or moved beyond the boundaries of this state for any purpose whatever, they come within the provisions of sections 1804 and 1807, and that a stock inspector or sheriff would be entitled to the fees of three dollars and his actual expenses for making the inspection of such animals, and this fee and actual expenses must be paid by the person for whom the inspection is made. On the other hand, when horses, mules or asses are shipped from one county to another in this state for the purpose of selling such stock or offering the same for sale at any public sale in this state, it is the duty of the stock inspector or sheriff to inspect the same in the manner provided in Section 1809, but, in such a case, the person making the inspection is not entitled to any fee from the shipper, it being simply an additional duty imposed upon such officer by law for which no extra

compensation is provided, and must therefore be performed under the salary already provided by law for such officer; provided such officer receives a fixed salary. If the inspection is made by a stock inspector, his compensation therefor must be fixed by the board of stock commissioners, pursuant to the provisions of section 1799, and under such section he is not entitled to receive any mileage. On the other hand, if the inspection is made by the sheriff of the county from which the horses are to be removed to some other county or public market in this state for the purpose of sale, the sheriff is not entitled to any fee, but, as the law makes it the duty of the sheriff, when he receives notice of any such movement of horses to inspect the same, he is entitled to mileage, under section 3137 of the Revised Codes, for the distance actually travelled in the performance of such duty, for said section 3137 provides that:

“While in the discharge of his duties, both civil and criminal, except as hereinbefore provided, the sheriff shall receive ten cents per mile for each and every mile actually and necessarily travelled.”

This section allows the sheriff mileage for the discharge of his duties in all cases except where a special provision is made in the statute allowing him only his actual and necessary travelling expenses. As sections 1808 to 1811 make no provision whatever for the payment of the sheriff's expenses in performing such duty, it necessarily follows that he would be entitled to mileage under said section 3137, and as these sections do not provide that the person having the inspection made shall pay such mileage, it necessarily follows that the same should be paid by the county from which the horses are to be removed, as the sheriff is an officer of such county and the law is a police regulation for the benefit of the taxpayers of that county.

You are therefore advised that where horses, mules or asses are shipped beyond the boundaries of the state, that the stock inspector or the sheriff is entitled to three dollars and his necessary actual expenses for inspecting the same. On the other hand, where the horses, mules or asses are shipped from one county to another county in the state for the purpose of sale or offering for sale, at any public sale, that the stock inspector is entitled to such compensation as may be fixed by the board of stock commissioners to be paid out of the stock inspection and detective fund; and if the sheriff makes such inspection he is entitled to no fee therefor, but is entitled to his mileage, which must be paid by the county.

The opinion given to Dr. M. E. Knowles on May 6, 1909, is hereby modified to conform to this opinion.

Yours very truly,

ALBERT J. GALEN,

Attorney General.