

Fees. Mileage. Sheriff's Fees and Mileage. Orphans' Home, Transportation to. School Districts, Numbering of. School Districts, Change of Numbers.

1. A sheriff, acting under an order of court, is entitled to receive ten cents per mile for the distance actually traveled in conveying a child to the State Orphans' Home, and ten cents additional, in full compensation, for the transportation and dieting of such child.

2. School districts, especially those which may have outstanding indebtedness in the form of bonds, or otherwise, should not change their numbers. Neither the county superintendent nor the board of county commissioners has power to change the numbers of school districts.

Helena, Montana, December 13, 1909.

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

Dear Sir:

I am in receipt of your letter of December 10, 1909, wherein you submit for my official opinion two questions, as follows:

1. Is the sheriff entitled to ten cents per mile in taking children to the orphans' home under an order of commitment of the district court * * * or is he entitled to receive only his actual expenses?

2. Where school districts of a county are numbered irregularly, is it within the power of the county superintendent to make an order changing the number of each school district in the county? If not, what body, if any, has power to make such order?

Your first question is provided for by section 3137, revised codes. Under this section sheriffs delivering prisoners at the state prison, or at the state reform school, or any insane person at the state insane asylum, shall receive actual expenses necessarily incurred in their transportation. The same section further provides:

"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 traveled and for transporting any person by order of court, except as hereinbefore provided, he shall receive ten cents additional per mile, the same to be in full for transporting and dieting of such person during such transportation."

It appears, therefore, that a sheriff transporting a child to the orphans' home, under order of court, is entitled to receive ten cents per mile for the distance actually traveled and ten cents additional, to be in full compensation for the transporting and dieting of such person during such transportation.

In reply to your second question, you are advised that school districts, though public corporations, are strictly limited in their powers. They can exercise none except such as is conferred by the law creating them. *Jay v. School District*, 24 Mont. 232.

Section 839, revised codes, provides that each school district shall be known as "District No., of county." The number of the district becomes important in that section 848, revised codes, provides that a district, under its own proper name or number, may sue and be sued, contract and be contracted with, and acquire, purchase, hold, sell and dispose of real and personal property. In the event that some of the districts in Powell county have outstanding obligations, such as bonds issued for the construction of school houses, a renumbering of such districts would lead to confusion; and, while I believe that the bonds of the old-numbered districts would remain as obligations of the same district under a different number, still, as heretofore suggested, I can find no authority either for the county superintendent of schools, or any other officer or board, to change the numbers of existing districts; and, therefore, believe it would be the safer method to continue the old-numbered districts, notwithstanding the fact that these numbers are not regular or consecutive.

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