

Sheriff's Mileage, Ten Cents in All Cases. Mileage of Sheriff, Ten Cents. Convicts-ex, Oath as to Qualifications to Vote. Perjury, When ex-Convict Liable for.

An ex-convict who takes the oath prescribed by Section 859 does not make himself liable for perjury.

Sheriff's mileage, in both civil and criminal actions, is ten cents per mile. In no case is the sheriff authorized to charge fifteen cents per mile.

Helena, Montana, April 20, 1909.

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

Dear Sir:

I am in receipt of your letter of the 15th instant, requesting an opinion upon the following questions:

"1. Under Section 859 of the Revised Codes is a person liable for perjury who takes oath prescribed in this section, and thereupon votes at a school election, if such person has previously been convicted of a felony, and has served his sentence under such conviction and never been pardoned or paroled?"

"2. Is the Sheriff of the county allowed ten cents per mile, or fifteen cents per mile, for making service of a summons and complaint in a civil action, wherein the county is the party plaintiff?"

"3. Under the statute may the Sheriff demand ten cents per mile, or fifteen cents per mile, as mileage for making service of a summons in a civil action, from the party plaintiff, when the party plaintiff is a private individual?"

In answer to your first question will say that in our opinion a person who takes the oath prescribed by Section 859, Revised Codes, could not be successfully prosecuted for perjury upon the ground that he had been convicted of a felony and had never been pardoned or paroled. There is nothing in that to call his attention to the fact of his prior conviction of felony, and in order to raise the question of a man's prior conviction of felony he should be specially challenged upon that ground in the manner provided in Sections 565 and 566, Revised Codes.

In answer to questions 2 and 3, you are advised that Section 3137, Revised Codes, repeals by implication all other laws of this state relating to the mileage of Sheriffs, in both criminal and civil actions and proceedings, and this section expressly provides that

"While in the discharge of his duties both civil and crim-

inal, except as hereinbefore provided, the Sheriff shall receive ten cents per mile for each and every mile actually and necessarily traveled."

And the cases hereinbefore provided relate to the transporting of prisoners to the state prison, children to the reform school and insane persons to the asylum, in which case he shall receive his actual expenses only. Therefore, there is no case under our statute where the Sheriff is warranted in charging fifteen cents per mile for the service of summons, complaint, subpoena, warrant or any other paper, nor has the sheriff any authority to charge private individuals in civil suits more than ten cents per mile for the service of any papers in such actions.

Section 3167, enumerating fees of the Sheriff, provides for fifteen cents mileage, but this section is an original code section, and, so far as the mileage is concerned, was clearly repealed by implication by the amendment to Section 3137, of March 3, 1905, and a Sheriff who attempts to charge more than ten cents a mile, either from the county or private individuals, may render himself liable to the various sections of the statute fixing penalties and imposing damages for the collection of excessive fees.

Very truly yours,

ALBERT J. GALEN,

Attorney General.