

**Sheriff, Mileage of Outside of State Boundaries. Mileage,
of Sheriff. Sheriff, Actual Expenses Of.**

There is no statutory authority whereby a sheriff may be paid for services rendered wholly without the state boundaries

except in cases of extradition, and in such cases the sheriff is acting as the agent of the governor of the state and should present his bill as a charge against the state.

As a matter of administration the board of county commissioners should, in cases which appear reasonable and just, pay the amount of the sheriff's expenses actually incurred while across the state boundary line.

March 25, 1911.

Mr. F. P. Leiper,
County Attorney,
Glendive, Montana.

Dear Sir:

Your letter of March 15th has been received, requesting my opinion upon the following question:

"Is a sheriff who has a warrant for the arrest of a person, which person is without the state, entitled to mileage for the distance traveled outside the state in bringing the prisoner into the state, or is he entitled only to his actual expenses.

"The above statement has reference to a case where the sheriff acts without extradition papers."

In reply, I will say, by the provisions of Section 9040 and 9041, Revised Codes, as you are aware, the authority of the sheriff of any county for purpose of making arrest, is co-extensive with the boundaries of the state. In an opinion rendered A. P. Heywood, county attorney Lewis and Clark county, under date of November 6, 1907, (Vol. 2, Opinions Attorney General p. 181) this office held that the sheriff when on extradition is not acting as sheriff, but rather as the agent of the governor of the state, and in such case should present his bill as a charge against the state. In criminal cases it is generally essential if not indispensable for a claimant against the state or county to point to the particular statute entitling him to receive the compensation claimed, and as you know there is no statutory authority whereby a sheriff may be paid for services rendered wholly without the state boundaries, except in cases of extradition. However, I realize that in a county like Dawson, where you are so close to the state boundary line, that it might become very necessary and desirable that your sheriff should go beyond state limits, and that delay or hesitation on his part in some cases might prove disastrous. I would, therefore, suggest to you as a matter of administration, rather than as one of law, that the board of county commissioners be advised in cases which appear reasonable and just to pay the amount of the sheriff's expenses actually incurred while across the state boundary line.

Yours very truly,

ALBERT J. GALEN,

Attorney General.