

Subpoena, Mileage for Service. Sheriff, Mileage Of.

Sheriff is not entitled to mileage for travel in attempting to serve a subpoena, unless service is actually had, but may recover his actual expenses.

June 3rd, 1911.

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

Dear Sir:

I am in receipt of your letter of the 18th ult., in which you submit for the consideration of this office the question as to whether or not a sheriff is entitled to charge for any mileage in attempting to serve a subpoena in a state case where he fails to find the witness. The particular case in which you make the inquiry as I understand from your letter, is the Stevens case, which was set for trial in that county and you caused subpoenas to issue for the witness Dred Rollins for the purpose of obtaining evidence as to whether or not Rollins was within the state of Montana in order to lay the foundation for the admission of testimony given by him at a former trial. These subpoenas were sent to the sheriffs throughout the state of Montana, and some of them in making their returns attached bills for services or mileage.

The question as to whether a sheriff is entitled to mileage in such instances was considered by this office in a communication addressed to Mr. J. P. Regan, deputy county attorney, Great Falls, Montana, on August 30th, 1905, in which it was held that a sheriff was not entitled to charge mileage in case of a warrant for arrest unless he actually made the arrest. The law relating to a subpoena is found in the same section, now 3167, of the Revised Codes. The same conclusion must be reached with reference to a subpoena. Actual service is necessary to sustain a charge for mileage. However the officer is entitled to his actual expenses in both cases. This question is discussed at length in the opinion above referred to and may be found in "Opinions of Attorney General for 1905 and 1906" page 179.

Some of the bills returned to you are for services and not for mileage. These are proper charges without any further reference to the sheriffs; but as to the other bills they should be returned to the

sheriffs with instructions to put in their bills for their actual expenses and return them to you, or to the county, and they will then be in proper form for consideration by the commissioners and if allowed will then be submitted to the state board, as suggested in your letter.

This may seem technical, but it is undoubtedly the law and the records should be made clear. It will perhaps make very little difference in the amounts, but the bills should read "Actual Expenses" instead of mileage.

I return herewith the bills and all papers transmitted to me except your letter.

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