

**Counties, Charges Against. Sheriff, Expenses Account of.
Mileage and Expenses, of Sheriff.. Expenses and Mileage of
County Officers.**

Mileage and actual expenses of travel cannot both be allowed. Where actual expenses are allowed the county board must determine the necessity and reasonableness of the charge made.

January 31st, 1913.

Hon. Joseph J. McCaffery,
County Attorney,
Butte, Montana.

Dear Sir:

I am in receipt of your letter of the 30th inst., inclosing copies of ex-Sheriff O'Rourke's expense account, with the request for my opinion as to the legality thereof. I also acknowledge receipt of a copy of an opinion rendered by you to the honorable county commissioners of your county, relating to the legality of the claims made

by the ex-sheriff. You are fully advised as to the statutory requirements relating to the form and manner of presenting claims to the board of county commissioners, and on that subject I shall do no more than to call attention to the statutes. From the information presented by the bill filed by Sheriff O'Rourke, I can not certainly say as a matter of law whether the same should be allowed in whole or in part, or rejected all together. It would appear from the statement of some of the items that the claim should be filed direct against the state, that is that it is a state rather than a county charge, if any proper charge at all. The question of the right of the sheriff to charge and collect mileage when traveling outside of the state has been heretofore considered by this department, in an opinion rendered to the Hon. F. P. Leiper, county attorney at Glendive, Montana, on March 15, 1911, and reported in Opinions of Attorney General of 1910-12 at page 124-125, to which opinion reference is hereby made. Sec. 3137, R. C., referred to by you, appears to be specific and plain and to leave little, if any, room for construction. It appears from that section that in transporting persons to the state prison, state reform school and insane asylum, actual expenses necessarily incurred are paid. In other cases 10 cents per mile is paid and where mileage is allowed that seems to include all other expenses. The Supreme Court has heretofore passed upon similar sections, and the holding of the court is universally to the effect that mileage and expenses are not allowed, but that mileage itself includes what other expenses may be incurred by the officer in the discharge of his duty.

Proctor v. Cascade County, 20 Mont. 315.

Scharrenbroich v. Lewis and Clark County, 33 Mont. 250.

This question is also incidentally treated on in

State ex rel. Wynne v. Board, 117 Pac. 77.

You are also aware of the fact that in addition to the specific provisions of Sec. 3137, relating to mileage, Sec. 3111 appears as a general law upon that subject.

The provisions of Sec. 3199 relate generally to what are properly charges against the county, and being a general law, it can not have the effect of repealing a specific provision relating to the particular subject. Moreover, both Sec. 3111 and Sec. 3137 are subsequent in point of time to Sec. 3199.

It is also fundamentally true that a charge against the county unless authorized by law, ought not to be allowed, and cannot legally be paid, for boards of county commissioners have no common law or general jurisdiction. Their power is statutory.

I inclose herewith copies of ex-Sheriff O'Rourke's expense account transmitted to me with your letter.

Very truly yours,

D. M. KELLY,
Attorney General.