

**Sheriff's Fees—Mileage of Sheriff.**

A sheriff should receive ten cents per mile for each mile actually and necessarily traveled while in the discharge of his duties and should receive no other compensation for train or horse hire or any other expense incurred in travel or for subsistence when such mileage is allowed.

October 3rd, 1917.

Mr. Lester H. Loble,  
County Attorney  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of recent date submitting the following for my opinion:

"On the 3rd inst. a request was telephoned to the Sheriff's office of this County from Marysville to come at once to Marysville, twenty-one miles distant, to quell some threatened I. W. W. disturbances. The deputy sheriff hired an automobile, and departed at once for Marysville, but without a warrant. Upon his return, the sheriff's office presented a duly verified claim against the County for \$12.00, as the expenses of the deputy sheriff in making said trip. This claim was disallowed by the Board of County Commissioners. This office has been requested by the Board of County Commissioners to obtain from you an opinion as to the legality of the claim presented."

Section 3137 Rev. Codes provides for the payment of expenses incurred by a sheriff in transporting prisoners, etc., and further provides that "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," etc.

This section also contains a prohibition against the payment of "any claim of a sheriff, or other officer, for team or horse hire, or any other expense incurred in travel or for subsistence in cases where mileage is allowed under this section; the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work."

Whether or not the sheriff is entitled to his expenses, under the statement of facts contained in your letter, seems to me to depend upon the meaning of the term "discharge of his duties," as in Section 3137.

Section 3010 enumerates the duties of the sheriff. By subdivision 1 of said section it is made his duty "to preserve the peace," and by subdivision 3 to "prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge."

The sheriff's office having received notice of a threatened disturbance at Marysville, one of his deputies hired an Autcmobile and went to Marysville with the object and for the purpose of "preserving the peace" and "preventing or suppressing an affray or breach of the peace," and in so doing I am of the opinion that he was acting in the discharge of the official duties of the sheriff with the meaning of the term "discharge of his duties" as used in Section 3137, and the sheriff is not, therefore, entitled to the amount of the expenses incurred by the deputy, but is entitled to mileage at the rate of ten cents per mile.

This opinion is not in conflict with, and neither does it overrule the opinions contained in 1 Op. Atty. Gen. 195 and 1 Op. Atty. Gen. 223. An examination of these opinions will disc'ose that they were rendered on statements of facts essentially different from the statement of facts contained in your letter.

Yours very truly,  
S. C. FORD,  
Attorney General