

Sheriffs—Prisoners—Mileage—Automobiles—Expenses.

When delivering prisoners at the state prison the sheriff is entitled to receive actual expenses incurred in their transportation under section 4885, R. C. M. 1921. When using his own car for such purpose the sheriff is entitled under chapter 80, laws of 1923, to not to exceed 12½¢ per mile for each mile necessarily traveled. If he rents a car for such purpose he is entitled to receive the reasonable cost of procuring such automobile transportation.

Lee Dennis, Esq.,
Clerk, Board of Examiners,
Helena, Montana.

July 22, 1925.

My dear Mr. Dennis:

You have requested an opinion on the following question:

“Will you kindly advise this office relative to mileage allowed sheriffs in transportation of prisoners to the state penitentiary at Deer Lodge by automobile, in whole or in part. Has the sheriff the right to charge ten cents per mile for himself and then charge an additional ten cents per mile for each prisoner transported? This is in cases where there is no train service for a part of the journey.”

Section 4885, R. C. M. 1921, which governs the mileage and expenses of the sheriff, reads in part as follows:

“Sheriffs delivering prisoners at the state prison * * * shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in going and returning from such institution.”

It is, therefore, my opinion, that the sheriff has no right to “charge ten cents per mile for himself and then charge an additional ten cents per mile for each prisoner transported.” The sheriff has the right to charge “actual expenses” only. If suitable transportation cannot be had by railroad and the sheriff makes use of his own car he is entitled, as a part of such actual expenses, to receive under chapter 80, laws of 1923, “not to exceed 12½c per mile for each mile necessarily traveled.” If the sheriff rents a car in a case where no suitable railroad transportation can be had he will be entitled to the reasonable cost of procuring such automobile transportation.

Very truly yours,

L. A. FOOT,
Attorney General.