

Sheriffs — Mileage — Expenses — Prisoners — Transportation.

A sheriff is not entitled to ten cents per mile for transporting and dieting prisoners but is permitted to charge actual expenses only.

J. H. Forster, Esq.,
County Attorney,
Malta, Montana.

October 10, 1927.

My dear Mr. Forster:

You have called my attention to chapter 111, laws of 1927, and to section 4885, R. C. M. 1921, and have asked my opinion whether the last clause in chapter 111 repeals the provisions of section 4885 relating to the right of the sheriff to charge ten cents per mile additional for transporting and dieting a prisoner, when transported under order of the court.

Former Attorney General Galen, in an opinion appearing in volume 3, Opinions of Attorney General, 138, held that section 3137 of the revised codes of 1907, now section 4885 of the revised codes of 1921, repealed by implication the last paragraph of section 3167 of the revised codes of 1907, which contained the identical language that now appears in the last clause of chapter 111.

While I have some doubt of the correctness of the opinion of former Attorney General Galen, insofar as it holds that these two sections are in conflict, nevertheless, I prefer to adhere to the conclusion announced in that opinion to the effect that these two sections are in conflict and that the later enactment, by implication, repeals the former.

The enactment of chapter 111 and the inclusion therein of the last clause, after its repeal by implication, places this enactment as of a later date than section 4885, and it is therefore my opinion that the last clause of chapter 111, by implication, repeals that part of section 4885 relating to the right of a sheriff to receive ten cents per mile additional for the transportation and dieting of a prisoner transported under order of the court.

It is my opinion that the sheriff is entitled to actual expenses only, as provided in chapter 111, and is not entitled to any additional expenses for transporting prisoners.

Very truly yours,

L. A. FOOT,
Attorney General.