

Sheriffs—Mileage—Fees—Prisoners—Transportation.

Where a sheriff makes an arrest outside the county and transports a prisoner to the county jail he is entitled to actual expenses only, as provided in section 4916 R. C. M. 1921, as amended by chapter 111, laws of 1927.

May 9, 1928.

George W. Padbury, Esq.,
County Attorney,
Helena, Montana.

My dear Mr. Padbury:

You have requested my opinion on the following question: Where the sheriff of Helena, Lewis and Clark county, goes to the city of Butte,

Silver Bow county, by automobile, and there arrests some prisoners and returns them to Helena, is he entitled to 12½c per mile, each way, and 12½c per mile for each prisoner so conveyed by him ?

In this connection you have referred to section 4885 R. C. M. 1921 and to section 4916, as amended by chapter 111, laws of 1927.

Section 4885 provides, in part, as follows:

“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; and for transporting any person by order of court, except as hereinbefore provided, he shall receive ten cents additional per mile, the same to be in full for transporting and dieting of such person during such transportation. The county shall not be liable for nor shall the board of county commissioners pay for any claim of the 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.”

Section 4916, as amended, provides in part as follows:

“For actual expenses in conveying a person, when under arrest, before a magistrate or to jail, or on habeas corpus, which must be allowed by the board of county commissioners.”

From the facts submitted, I presume that the prisoners in question were not being transported under an order of court, and therefore section 4885 R. C. M. 1921, *supra*, would have no application. Even if the prisoners were to be considered as being transported under an order of court the conflict, if any, between these two sections would have to be construed in favor of section 4916, *supra*, as amended as this section deals with the explicit condition in question, to-wit: the transportation of prisoners to jail.

It is therefore my opinion that the sheriff is entitled to actual expenses only, which would be 12½c per mile for the distance actually traveled, and the actual cost of care of the prisoners en route.

Very truly yours,

L. A. FOOT,
Attorney General.