

Sheriffs—Fees—Expenses—Arrests.

In making an arrest under a warrant a sheriff is entitled to actual expenses only and in computing the expense the sheriff should be allowed 12½c per mile when travel is by automobile, and whatever other additional expense was actually incurred.

November 13, 1928.

L. E. Black, Esq.,
Sheriff,
Stanford, Montana.

My dear Mr. Black:

You have requested my opinion on the following question:

“Where a sheriff is given a warrant of arrest and has to travel by automobile and makes the arrest and brings the prisoner before the magistrate as directed in the warrant, what fee and mileage is he entitled to charge?”

Chapter 111, laws of 1927, relating to fees of sheriffs, 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 foregoing it is evident that in making an arrest under a warrant a sheriff is entitled to actual expenses only. The question then arises as to how these expenses are to be computed.

In the case of *Scharrenbroich v. Lewis and Clark County*, 33 Mont. 250, our supreme court said:

“The object of the legislature was to have certain services performed for the people, and not to make money for a sheriff or to set him up in business. The old idea of paying an officer was to feed him and clothe him and take care of his family, while he was giving his services to the people. There never was any idea that holding public office was a private business.”

This being the theory upon which the legislature must have been acting when fixing the mileage to be allowed a sheriff, it is evident that it was considered that 12½c a mile was the actual expense of travel, and in my opinion, in computing the expense, the sheriff should be allowed this mileage plus whatever other additional expense was actually incurred.

Very truly yours,

L. A. FOOT,
Attorney General.