

Sheriffs—Fugitives—Expenses—Automobiles.

When a sheriff makes a trip outside of his county for the return of fugitives he is entitled to his actual expenses. Where travel is by railroad the fare paid, sustenance, and such other reasonable expenses as are necessarily incurred to effect the return of the fugitive are actual expenses. Where travel is by automobile, in lieu of the railroad fare, he is entitled to receive

such a sum per mile as the board determines constitutes the actual expense of the automobile.

R. N. Hawkins, Esq.,
Assistant State Examiner,
Helena, Montana.

August 5, 1929.

My dear Mr. Hawkins:

You have requested an opinion of this office upon the following question:

“What constitutes the actual and necessary expense a sheriff may charge on trips made for the return of fugitives arrested outside the county?”

Chapter 89, Laws of 1929 provides in such case as follows:

“Nor shall this act apply to trips made for the return of fugitives apprehended and arrested outside the county, for which the sheriff shall receive the actual and necessary expenses incurred in going for and returning with such fugitive.”

The statute is plain and unambiguous as to the provisions that only actual expenses can be paid where the trip is made outside of the county. The only question is: What are actual expenses? Where travel is by railroad the fare paid, sustenance, and such other reasonable expenses as are necessarily incurred to effect the return of the fugitive are actual expenses within the meaning of the statute.

Where, however, travel by automobile is necessary the sheriff can be repaid only the amount he necessarily has expended for sustenance and other actual expenses together with such sum per mile as in the opinion of the county commissioners was the actual expense of the automobile travel, not to exceed 12½ cents per mile.

Section 1 of Chapter 80, Laws of 1923 provides:

“Whenever it shall be necessary for any state or county officer to use his own automobile in the performance of any official duty where traveling expense is allowed by law, such officer shall receive not to exceed twelve and one-half cents per mile for each mile necessarily traveled unless otherwise specifically provided by law and the members of any lawful approving board shall be liable upon their official bonds, for any claim which they may allow in excess of such amount. Provided further, that in no case shall an automobile be used as herein provided if suitable transportation can be had by railroad.”

This statute provides that the 12½ cents is the maximum which may be charged. It is for the “board” (in this instance the board of county commissioners) to determine what sum, not to exceed 12½ cents, is to be allowed. The sheriff could not, for instance, hire an automobile for 10 cents per mile and charge 12½ cents to the county, pocketing the difference.

It is therefore my opinion that under the provisions of Chapter 89,

Laws of 1929, that as to trips outside the county for the return of the fugitive, the sheriff is entitled to charge only the amount actually paid for transportation—that is, the railroad fare where transportation is by train, together with the other actual expenses as hereinbefore stated. Where travel is by automobile the sheriff may be repaid, in addition to the other actual expenses, only such sum per mile as the board determines constitutes the actual expense for the return of the fugitive, not to exceed 12½ cents per mile.

Very truly yours,

L. A. FOOT,
Attorney General.