

Sheriffs—Mileage—Preservation of the Peace.

Sheriff making trip necessary to preserve the peace is entitled to mileage.

Walter R. Knaack, Esq.,
County Attorney,
Shelby, Montana.

October 18, 1930.

My dear Mr. Knaack:

You have requested my opinion on the following question:

“Sometime ago the sheriff of Toole county was called to an extreme corner of the county by a landowner by the information that two or three men had put up a tent and were dispensing liquor to workers on a gas pipeline which was being laid in the vicinity of this land, and that they were causing quite a lot of disturbance and were a nuisance. In answer to the call the sheriff

went up there and quieted the nuisance; the men folded up their tent and left.

“Another instance: two farmers were having a dispute over a land fence and one called up the sheriff to come out there. The dispute was waxing warm and but for the timely appearance of the sheriff might have ended in a breach of the peace. The sheriff settled the dispute by bringing the two farmers to an agreement but there was no actual disturbance of the peace.

“In the above instances the sheriff put in his claim for mileage to the county commissioners and they refused to pay the same, claiming they had no statutory authority to pay him for such trip.

“Will you kindly give me your opinion as to whether or not the above matters are such that the county cannot legally pay him for such services? The county commissioners maintain that a warrant must issue first, and, obedient to the warrant, the sheriff acting may receive his mileage, but not otherwise.”

Section 4774, R.C.M. 1921 as amended by chapter 157, laws of 1925, pertaining to the duties of the sheriff, provides:

“The sheriff must:

“1. Preserve the peace. * * *

“3. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge. * * *”

The courts have generally held that where a duty is imposed upon an officer he has the right to use all reasonable means and incur any expense necessary to perform that duty. For this reason this office has always held that the sheriff is entitled to be paid his mileage necessarily incurred in preserving the peace.

Very truly yours,

L. A. Foot,
Attorney General.