

Sheriffs—Arrest—Mileage.

A sheriff who makes an arrest under a warrant is entitled to mileage going and returning for serving a warrant, and mileage at the statutory rate for each prisoner arrested and transported before a magistrate.

Board of County Commissioners,
Boulder, Montana.

August 19, 1932.

Gentlemen:

I have your request for an opinion concerning what mileage a sheriff is permitted to charge when making an arrest under a warrant when he travels in his automobile from the county seat to another point in the county, arrests the two persons mentioned in the warrant and conveys them to the county seat, only one trip being made in performing the services aforesaid:

The law in effect upon the subject is section 4916, R.C.M. 1921 as amended by chapter 89, laws of 1929. As amended, this section reads (in so far as it is pertinent to the question) as follows:

"In addition to the fees above specified, the sheriff shall receive for each mile actually traveled in the performance of any official duty, or in serving any writ, process, order or other paper including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail, ten cents (10c) per mile when such travel is made by railroad and twelve and one-half cents (12½c) when travel is made other than by railroad, both going and returning, and he shall also be allowed mileage based upon the above rates for each person transported under an order of court, for the actual distance conveyed or transported within the county, the same to be in full payment for transporting and dieting such person during such transportation. Provided, however, that this Act shall not apply to the delivery of prisoners at the State Prison or at the Reform School, or insane persons to the State Insane Asylum, for which he shall receive the actual expense incurred as provided by Section 4885 of the Revised Codes of 1921. 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. * * *

A comparison of the section after its amendment with the section as it appeared before its amendment in 1929 will disclose what changes were intended to be made by the legislature in respect to the mileage of a sheriff. Before its last amendment the section provided:

"For each mile actually traveled in serving every writ, process, order, or other paper, going and coming, ten cents per mile, when such travel is made by railroad, and in all cases wherein travel is made other than by railroad twelve and one-half cents per mile going, and twelve and one-half cents per mile returning. * * *

"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."

It will be observed that prior to 1929 a sheriff making an arrest under a warrant was entitled to charge the county 12½c per mile when using an automobile for each mile actually traveled in serving the warrant, both in going to the place of arrest and in returning therefrom. He was also entitled to receive, in addition thereto, the actual expenses incurred in conveying the prisoner before a magistrate or to jail. Under that law the number of miles traveled, both going and returning, in serving the warrant, would be multiplied by 12½c which would be the mileage allowable for serving the warrant. For conveying the prisoner before a magistrate, or to jail, after his arrest, the sheriff was entitled, in addition thereto, to whatever actual expenses were incurred in so doing.

By the last amendment the legislature abandoned the policy of allowing actual expenses for conveying the prisoner under arrest before a magistrate, or to jail, and in lieu thereof adopted the policy of allowing

mileage, so that now when a sheriff serves a warrant of arrest he is entitled to 12½c per mile as mileage for conveying the prisoner under arrest before a magistrate, or to jail. It thus appears that now, as formerly, the sheriff, when serving a warrant of arrest, and the travel is made by automobile, is allowed mileage at the rate of 12½c per mile for the miles actually traveled in going to the place of arrest and returning therefrom, and in addition thereto, in lieu of the actual expenses of conveying the person before a magistrate, or to jail, he is entitled to 12½c per mile for the number of miles actually traveled with the prisoner from the place of arrest to the magistrate, or the jail. This last mentioned mileage is in lieu of the expenses that were allowed under the section as it existed prior to the last amendment.

Mileage is an allowance for expenses computed at a certain rate for the number of miles traveled. It is not necessarily exclusively for the cost of the actual transportation. It also includes all the expenses attendant upon that transportation, such as meals, lodgings, guards, etc. As has been observed above, the policy of the state has always been that these expenses should be borne by the county plus the mileage of the officer allowed for serving the warrant, and, in my opinion, the law, after its amendment, cannot be construed so as to allow the mileage of the officer for serving the warrant only, leaving to him the burden of bearing the entire expense of not only providing actual transportation for the prisoner but all the other expenses attendant upon that transportation. I think the legislature intended merely to substitute mileage for the expenses incurred in conveying the prisoner before the magistrate, or to jail.

Under the law before its amendment if an officer went by railroad to serve a warrant and arrested his prisoner and returned with him by railroad he was entitled to 10c per mile for himself, going and coming, and also the expense of bringing the prisoner before the magistrate, or to jail, which expense would include the fare paid for the prisoner, lodgings, meals, and any other necessary expense attendant upon bringing in the prisoner. Under the law, as amended, the sheriff when traveling by railroad for the purpose of serving a warrant and bringing the prisoner before a magistrate, or to jail, is entitled to 10c per mile going and returning which is for serving the warrant and in addition thereto, 10c per mile from the place of arrest to the magistrate, or to jail, but the officer is required to pay the railroad fare, meals, lodgings, and all other expenses in connection with the transportation of his prisoner out of the 10c per mile thus allowed. If he should arrest and convey more than one prisoner he is entitled to 10c per mile for each of the prisoners conveyed but for serving the warrant he is entitled to charge only 10c per mile for the number of miles actually traveled in going to serve the warrant and in returning, regardless of the number of persons arrested under the warrant.

The mileage allowed for conveying the prisoner is in lieu of the expenses formerly payable by the county. Were it otherwise an officer arresting more than one prisoner might find that a single mileage of 10c per mile for conveying the prisoners would be insufficient to pay the ex-

pense of transportation and he would have to stand these expenses himself, whereas, under the act before its amendment all the expenses would have been paid by the county. When an automobile is used the same method of arriving at the mileage to be allowed is used as in the case where travel is made by railroad, save and except that the number of miles traveled is multiplied by $12\frac{1}{2}c$ per mile instead of 10c.

The act provides that in transporting a person under order of court the officer is to receive the same mileage as above mentioned for "each person transported," the same to be in full payment for transporting and dieting such person during such transportation. In addition, he is allowed mileage at the same rate for serving the order. The mileage allowed for the transportation of the person transported is in lieu of expenses incurred in the transportation of the person, exclusive of the sheriff's own expenses, which latter are covered by the mileage for serving the order. I perceive no logical reason for distinguishing between the mileage allowed when the sheriff transports persons under an order of court and under a warrant of arrest. Both involve the same class of service and the same class of expenses and the legislature having made plain that the mileage to be allowed when persons are transported under an order of court is 10c per mile for each person transported, and taking into consideration that formerly all the expenses of conveying persons arrested before a magistrate, or to jail, were paid by the county and that these expenses increased with the number of prisoners conveyed, and, further, that the policy of the law as amended is not to evade the payment of these expenses by the county but to compute them according to mileage instead of actual expenditures, it is my opinion that the legislature intended that mileage should be allowed for each prisoner conveyed even though two or more were conveyed by the sheriff at the same time.

The provision that the sheriff shall receive mileage for each mile actually traveled in serving the warrant of arrest and in conveying the prisoner would, at first blush, seem to refute the idea of allowing mileage to the sheriff both for serving the warrant and for conveying the prisoner where both services are performed during the same trip, as it may be said that on the return trip the sheriff has not traveled twice the actual number of miles from the place of arrest to the place of return merely because he has the prisoner with him on the return trip. However, the law regards the service of the warrant and the conveying of the prisoner as two separate acts and the mileage allowed the sheriff going and returning in the service of the warrant in his mileage (in lieu of his own expenses) while the mileage allowed for conveying the prisoner is for the expense of conveying the prisoner. The sheriff is entitled to the mileage for the number of miles traveled by him going and returning, and also for the number of miles he has conveyed his prisoner. When a number of prisoners is conveyed on one trip each prisoner has been conveyed the number of miles that is traveled from the place of arrest to the magistrate, or to jail.

Sherman vs. County of Santa Barbara, 59 Cal. Rep. 483;
Cunningham vs. County of San Joaquin, 49 Cal. 323;

Allen vs. Napa County, (Cal.) 23 Pac. 43;
Monahan vs. San Diego County, (Cal.) 29 Pac. 417;
Binford vs. Robinson, (Tex.) 244 S. W. 807.

For the reasons hereinabove expressed, it is my opinion that a sheriff, when using an automobile, is entitled to charge 12½c per mile for going to the place of arrest and returning, and in addition thereto, is entitled to charge 12½c per mile for conveying each prisoner from the place of arrest to the magistrate, or to jail, even though the prisoner or prisoners are conveyed in the same automobile (and on the same trip) that the sheriff uses in returning from the place of arrest.

Very truly yours,

L. A. FOOT,
Attorney General.