

Sheriffs—Fees—Dances—Mileage—Traveling Expenses.

Sheriff is entitled to mileage for number of miles actually traveled in the performance of his duty, and is also entitled to 10c per mile when traveling by railroad and 12½c per mile when traveling by automobile, for each prisoner being transported, whether while under arrest either with or without a warrant.

Mr. R. F. Wellcome,
County Attorney,
Superior, Montana.

May 11, 1931.

My dear Mr. Wellcome:

You have requested my opinion on the following questions:

"1. Where the sheriff sends a deputy to police a dance in response to requests from the managers and the deputy rides to the dance on a truck and returns by railroad, riding on a pass, thus expending nothing for transportation, is the sheriff entitled to mileage at 12½c per mile going and 10c per mile returning?

"2. Is the sheriff entitled to mileage for both himself and also for each additional prisoner when transporting them within the county, in making an arrest either with or without a warrant?"

In answer to your first question, section 4916, R. C. M. 1921, as amended by chapter 89, laws of 1929, provides that the sheriff shall receive the mileage above specified for each mile actually traveled in the performance of an official duty; therefore, the mileage allowed has nothing whatever to do with the sheriff's actual expenses incurred and the only question is whether the mileage was actually traveled. For this reason the sheriff is entitled to this mileage.

In answer to your second question, will say that section 4916, supra, as amended by the laws of 1927, allowed the sheriff only actual expenses in the transportation of prisoners; however, this was amended by chapter 89, laws of 1929, allowing the sheriff 10c per mile when traveling by railroad, and 12½c when traveling other than by railroad, and provided that he should 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.

From the foregoing it is evident that the legislature intended to repeal the provisions as to actual expenses in conveying prisoners, and to allow the sheriff mileage therefor, and this would apply, in my opinion, to the transportation of persons under arrest either with or without a warrant.

Very truly yours,

L. A. FOOT,
Attorney General.