

Opinion No. 251.**Sheriffs—Fighting Forest Fires—
Duty—Mileage—Use
of Prisoners.**

HELD: The sheriff may collect mileage when called by private persons to fight forest fires on private land. The same rule applies to state lands or state forests.

The sheriff may take prisoners from the county jail to fight forest fires on private lands or state lands.

August 13, 1940.

Mr. Harold K. Anderson
County Attorney
Helena, Montana

Dear Mr. Anderson:

You have submitted the following:

"1. May the Sheriff collect mileage when called by private persons to fight forest fires on private land?"

"2. May the Sheriff take prisoners from the county jail to fight fires on private land?"

"3. Would there be any difference in your conclusions if the fire was on public domain, state land or within a national or state forest?"

Section 1833, R. C. M., 1935, provides,

"The state forester shall appoint in such number and localities as he deems wise, public-spirited citizens to act as volunteer fire wardens. Every sheriff, under-sheriff, deputy sheriff, game warden, and deputy game warden shall be ex-officio a fire warden, but shall not receive any additional compensation by reason of the duties hereby imposed, and

they shall be deemed paid fire wardens under the terms of this act * * *."

Section 1835 (Id.), reads as follows:

"All fire wardens shall have authority to call upon any able-bodied citizen between the ages of eighteen and fifty years, resident in the vicinity, for assistance in putting out fires * * *."

Section 1830.9 (Id.), authorizes cooperation with private forest owners and farmers in the following language:

"The state forester is hereby authorized to cooperate with forest owners and farmers in the development and protection of state and privately owned forest lands, plantations and shelter belts and brush disposal areas within the state."

In view of these statutory provisions, we are of the opinion that a sheriff is acting within his statutory duties when he assists in fighting forest fires on private lands. While no facts are presented, it is obvious that in many instances where private lands adjoin state forest lands, the fighting of forest fires on private lands is incidental to the protection of state lands. It would be most unfortunate if a sheriff were required to sit idly by while private forest lands burned, until the fire reached state forest lands. Section 1835 makes no exception in the case of prisoners in the county jail. In the absence of statutory exemption I see no reason why they should be exempt from the call of the sheriff for assistance.

If it is the duty of the sheriff to fight forest fires and he must travel in order to reach them, it would seem to follow that he should receive mileage. Section 4885 (Id.), seems applicable, it reads:

"* * * While in the discharge of his duties, both civil and criminal, except as hereinbefore provided, the sheriff shall receive ten cents per mile for each and every mile actually and necessarily traveled. * * *"

We are therefore of the opinion, for the reasons herein stated, that your first and second questions should be answered in the affirmative and the third, so far as it concerns state lands or forest lands of the state, should be answered in the negative.