

**Opinion No. 6.****Officers—Sheriffs—Mileage.**

HELD: 1. Sheriffs receive actual expenses where prisoners are transported by railroad or bus to state institutions.

2. Sheriffs receive ten cents per mile where prisoners are transported by the sheriffs' own automobiles to the state institutions.

3. Sheriffs may use their own automobiles in transporting prisoners to state institutions where railroad and bus transportation is not suitable.

4. Suitability of transportation is determined by all the surrounding circumstances.

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December 28, 1938.

Mr. W. A. Brown  
State Examiner  
Capitol Building  
Helena, Montana

My Dear Mr. Brown:

For your guidance, I am rendering for you my opinion on the following questions which have been submitted to me by various county officials:

“What is the mileage rate allowed in a case where a car is used to

transport a prisoner to the penitentiary?"

"Would this apply in the case of an insane patient going to the state hospital and where the county stands the expense?"

Section 4885 provides that "Sheriffs delivering prisoners at the state prison, or state reform school, or insane persons at the state insane asylum shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in going to and returning from such institution."

The above provision applies where transportation is had by train or bus. If suitable transportation can be had by train or bus, the officer must use that mode of travel, and will be allowed his actual expenses. (4884.1.)

As an exception to the provision quoted in Section 4885 I find therein the following language, "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; and for transporting any person by order of court, **except as hereinbefore provided**, he shall receive ten cents additional per mile, the same to be in full for transporting and dieting of such person during such transportation."

Section 4884.1 allows an officer not to exceed seven cents per mile where he uses his own automobile, "unless otherwise specifically provided by law."

The exception quoted in Section 4885 refers to the provision "otherwise specifically provided by law," found in Section 4884.1, and constitutes the exception to the clause "actual expenses" referred to therein. Such provision authorizes the sheriff to charge ten cents per mile for distance necessarily traveled, where he uses his own automobile in transporting prisoners or patients to said institutions.

Section 4916, as amended by Chapter 139 L. 1937 can have no application to Section 4885, as it expressly provides that it 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 the sheriff shall receive the actual expenses incurred as provided by Section

4885. When the officer travels with his own car the ten cents per mile allowance is in lieu of actual expenses, and is the equivalent thereto.

Section 4884.1 provides that in no case shall an automobile be used, if suitable transportation can be had by railroad (or bus). If such transportation is not suitable the sheriff may use his own automobile.

A determination of the suitability of railroad or bus transportation is dependent upon all the surrounding facts or circumstances, such as the convenience to the officer, the welfare of the patient, if being transported to the insane asylum, the sheriff's absence from the duties of his office, and other like facts. See Attorney General's Opinion 276, Vol. 17.