

No. 199

**SHERIFFS AND CONSTABLES—MILEAGE—SERVICES
PERFORMED WITHIN COUNTY**

Held: In the performance of services as mentioned in Section 4916, Revised Codes of Montana, 1935, as amended by Chapter 121, Laws of 1941, within the county, the sheriff is entitled to actual expenses when using the railroad, and to mileage as therein provided when using means of transportation other than railroad. The actual expenses and mileage, as herein mentioned, apply when transporting prisoners from the county jail to District or Justice Court under order of arrest, and before or after trial or conviction.

August 7, 1941.

Mr. E. Gardner Brownlee
County Attorney
Ravalli County
Hamilton, Montana

Dear Mr. Brownlee:

You have requested my opinion as to what mileage a sheriff is entitled in the following instances:

1. When transporting a prisoner on warrant of arrest.
2. When transporting a prisoner from Justice Court to the county jail after conviction.

Section 4916, Revised Codes of Montana, 1935, as amended by Chapter 121, Laws of 1941, deals with the fees allowable to the sheriff, and after setting out specific fees for certain enumerated services, provides:

"In addition to the fees above specified, the sheriff shall receive for each mile actually traveled, 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, only his actual expenses when such travel is made by railroad, and when travel is other than by railroad he shall receive seven cents (7¢) per mile for each mile actually traveled by him both going and returning, and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail, and he shall receive the same mileage and his actual expenses for the persons conveyed or transported under order of court within the county, the same to be in full payment for transporting and dieting such persons during such transportation: provided that where more than one or more persons are transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged."

The language of this section is plain. It provides for compensation of the sheriff in serving process and in transporting prisoners within the county. It specifically implies the sheriff, in performing such services, may use either the railroad or other means of transportation. If he uses the railroad, he is entitled to actual expenses necessarily incurred. In transporting a prisoner, or prisoners, by railroad, he is entitled to actual expenses for both himself and prisoners. Such actual expenses ordinarily would be train fare, meals and lodging.

If, in performing such services mentioned in said section, he uses his own automobile, or a public conveyance, such as a bus, he is entitled to charge seven cents (7¢) per mile for each mile actually and necessarily traveled for both himself and his prisoners.

To illustrate: (a) The sheriff is obliged to travel from the county seat to a distant point within the county in order to serve some process; he

uses the railroad as a means of transportation. He is entitled to charge his actual expenses. Such expenses would include train fare, both ways, meals and lodging. (b) For the same service, the sheriff uses his own automobile or a public conveyance. He is entitled to charge seven (7¢) cents per mile for each mile actually and necessarily traveled. He is allowed no other expenses, and this seven cents must include his meals and lodging. (c) The sheriff goes from the county seat to a distant point to make an arrest and return the prisoner to jail. He uses the railroad and is entitled to his actual expenses necessarily incurred. Such expenses would include train fare for himself going and returning and meals and lodging for himself; train fare for the prisoner or prisoners returning and the cost of their meals and lodging. (d) On this trip he uses his own automobile, or a public conveyance other than the railroad. He is entitled to charge seven cents (7¢) per mile for each mile traveled by him in going and returning, and seven cents per mile for his prisoner or prisoners returning. If more than one prisoner, he would be entitled to charge but the one mileage for the prisoners.

The same mileage and actual expenses, as illustrated above, apply when the sheriff transports a prisoner from or to Justice Court or District Court, either before or after conviction or trial.

The mileage and actual expenses herein referred to apply to the sheriff when performing the services mentioned within the county in the regular course of his duties, and have no application to transporting prisoners to the state prison or reform school or insane persons to the state hospital. The latter is governed by the provisions of Section 4885, Revised Codes of Montana, 1935, as amended by Chapter 121, Laws of 1941, and is covered by Opinion No. 163, Volume 19, Official Opinions of the Attorney General.

It might appear at first blush the provisions of Section 4885 and 4916, as amended, *supra*, are in conflict. Section 4885 while primarily dealing with transportation of prisoners to the state prison or reform school, or insane persons to the insane asylum, contains the following provision:

"While in the discharge of his duties, both civil and criminal, except as hereinbefore provided, the sheriff shall receive seven cents (7¢) 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 seven cents (7¢) additional per mile, the same to be in full for transporting and dieting of such person during such transportation; provided that where more than one or more persons are transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged. The county shall not be liable for nor shall the board of county commissioners pay for any claim of the sheriff or other officer, for team or horse hire, or any other expense incurred in travel or for subsistence, in case where mileage is allowed under this Section; the fees for mileage named in this Section being in full for all such traveling expenses in both civil and criminal work."

It will be noted, under this provision, no mention is made as to the means of travel, but the mileage provided for would appear to be allowable whether the transportation is by railroad, bus or automobile. However, our Supreme Court—in the case of *Brannin v. Sweet Grass County*, 88 Mont. 412, 416, 293 Pac. 970—expressed its opinion on the meaning of the phrase, "while in the discharge of his duties, both civil and criminal," as used in the above section, and there said:

"In our opinion, the phrase, 'while in the discharge of his duties, both civil and criminal,' as employed in Section 4885, does not mean that the sheriff shall receive ten cents per mile in the performance of every duty imposed upon him; but rather, that in the performance of

duties for which by other provisions of the statute he is authorized to charge mileage, it is to be fixed at the rate of ten cents per mile."

This case was decided before the rate of mileage was changed to seven cents, and thus the use of the words "ten cents."

Under Section 4916, supra, no mileage is provided for the sheriff when using the railroad, but only actual expenses. Hence, the provisions of Section 4885, quoted above, as explained in the Brannin case, do not apply and are therefore not in conflict.

It is therefore my opinion that, in performing the services mentioned in Section 4916, Revised Codes of Montana, 1935, as amended by Chapter 121, Laws of 1941, the sheriff is entitled to actual expenses when using the railroad, and to mileage as therein provided when using means of transportation other than railroad. When transporting a prisoner or prisoners under order of arrest, or from the county jail to District or Justice Court, either before or after trial or conviction, the same actual expenses and mileage apply.

Sincerely yours,

JOHN W. BONNER
Attorney General