

Opinion No. 44**Sheriff—Mileage—State Institutions—Prisoners, Expenses For Delivery
of—Insane Persons, Expenses For Delivery of**

Held: Under the provisions of Chapter 59, Montana Session Laws of 1949, a sheriff who uses a privately owned vehicle to transport prisoners to the State Prison and the State Reform School, or insane persons to the State Insane Asylum shall receive as a part of his expenses nine cents (9c) per mile for each and every mile actually and necessarily traveled.

2. The sheriff shall not receive an additional nine cents (9c) for each mile the prisoner or insane person is transported.

July 26th, 1949.

Mr. M. L. Parcels
County Attorney
Columbus, Montana

Dear Mr. Parcels:

You have submitted for my consideration the following question:

"Will you kindly advise as to correct fees and charges of a Sheriff for delivering prisoners at the State Prison or at the State Reform School, or insane persons at the State Insane Asylum?"

The pertinent statutory provisions are contained in Section 1 of Chapter 59, Montana Session Laws of 1949, which amends Section 4885, Revised Codes of Montana, 1935, as amended by Section 3 of Chapter 121, Montana Session Laws of 1941.

Section 3 of Chapter 121, Montana Session Laws of 1941 is as follows in part:

"Section 4885. Mileage and Expense of Sheriff. Sheriffs delivering prisoners at the State Prison or at the 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 and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the State Board of Examiners or by the Board of County Commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the State or counties, and no other or further compensation shall be received by sheriffs for such expenses. While in the discharge of his duties, both civil and criminal, except as **hereinbefore provided**, the sheriff shall receive seven (7c) 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 (7c) additional per mile, the same to be in full for transporting and dieting of such person during such transportation; . . ." (Emphasis mine.)

Section 4885, as amended by Chapter 121 was considered in Opinion Number 163, Volume 19, Report and Official Opinions of Attorney General. The then Attorney General held that a sheriff when delivering prisoners to the State Prison or Reform School, or insane persons to the Insane Asylum, whether by railroad or automobile, is entitled only to actual expenses necessarily incurred without regard to rate of mileage. The opinion said that the phrase "except as hereinbefore provided, the sheriff shall receive seven cents (7c) per mile" specifically excepted the delivering of prisoners and insane persons from the mileage rate and thus sheriffs on such trips were limited to actual expenses.

Now Section 4885 has been amended again and is contained in Section 1 of Chapter 59, Montana Session Laws of 1949 as follows in part:

"Section 4885. Mileage and Expense of Sheriff. Sheriffs delivering prisoners at the State Prison or at the 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 and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the State Board of Examiners or by the Board of County Commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the State or counties, and no other or further compensation shall be received by sheriffs for such expenses, **provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided.** While in the discharge of his duties, both civil and criminal, the sheriff shall receive nine cents (9c) 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 nine cents (9c) additional per mile, the same to be in full for transporting and dieting of such person during such transportation; . . ." (Emphasis mine.)

Section 1 of Chapter 59, above quoted, leaves out the "except hereinbefore provided" phrase and adds the clause, "provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided."

Taking into consideration both of the above factors it is only reasonable to find that the Legislative intent was to change the method of computing the expenses of sheriffs in transporting prisoners and insane persons in private automobiles so as to allow mileage for such transportation. In my opinion either the exclusion of the one phrase or the inclusion of the second clause would in itself have been sufficient to demonstrate the Legislative intent, the combination of the two make it doubly certain that such was the Legislative intent.

An additional statute dealing with the compensation of sheriffs is Section 12464, Revised Codes of Montana, 1935. Section 12464 is as follows:

"Sheriffs delivering prisoners at the State Prison must receive all actual expenses necessarily incurred in their transportation, the amount of the expenses in each case to be audited and allowed by the Board of Examiners, and paid out of any moneys in the State treasury appropriated for that purpose, and no further or other compensation must be received by sheriffs for such transportation or services."

Since the above quoted Section and Section 4885, as contained in Chapter 59, Laws of 1949, relate to the same subject they are in *pari materia* and it is an elementary principle of law that statutes in *pari materia* must be construed with reference to each other. Construing the two Sections together, the provision for actual expenses in Section 12464 must be read with the interpretation of actual expenses as con-

tained in Chapter 59, Laws of 1949 in mind. Thus actual expenses as stated in Section 12464 must contain the mileage rates referred to in Chapter 59.

Even if it could be said that Section 12464 and Section 4885, as contained in Chapter 59 were inconsistent with each other my opinion would not be different. In the case of *State ex rel. Wiley v. District Court*, 118 Mont. 50, 164 Pac. (2d) 358, the Montana Supreme Court held that earlier statutes to the extent of any repugnancy are controlled by later statutes. Since Chapter 59 is the latest evidence of Legislative intent, it must control and therefore Section 12464 does not in any way change any interpretation of Chapter 59, Laws of 1949.

The question now remains as to whether or not the sheriff is to receive an additional nine cents (9c) for the distance the prisoner or the insane person was transported. The pertinent portion of Section 1 of Chapter 59, Laws of 1949 is as follows:

" . . . and for transporting any person by order of court except as hereinbefore provided, he shall receive nine cents (9c) additional per mile, the same to be in full for transporting and dieting of such person during such transportation. . . ."

It should be noted that this portion of Chapter 59, except the change from seven to nine cents, is exactly the same as Section 4885 as contained in Section 3 of Chapter 121, Laws of 1941. The "except as hereinbefore provided" phrase has not been omitted from this portion of Chapter 59 and from this I draw the inference that the Legislature did not intend to provide an additional mileage of nine cents (9c) per mile for transporting persons in the case of delivering prisoners at the State Prison or at the State Reform School, or insane persons at the State Insane Asylum, such cases being the exception referred to in the aforementioned "except as hereinbefore provided." Thus I conclude that the additional nine cents (9c) per mile is to be paid to the sheriff only in certain specified instances other than the transporting of prisoners and insane persons to State Institutions.

It should be kept in mind that the propositions set forth in this opinion apply only when it is proper to use a privately owned vehicle for such transportation. Section 4884.1, Revised Codes of Montana, 1935, as last amended by Section 2 of Chapter 93, Montana Session Laws of 1949, relating to the mileage of all officers provides "That in no case shall an automobile be used as herein provided if suitable transportation can be had by railroad or bus." Opinion Number 6, Volume 18, Report and Official Opinions of Attorney General holds that the suitability of transportation by railroad or bus is a question of fact to be determined by the circumstances of the individual case.

It is therefore my opinion that a sheriff delivering prisoners to the State Prison or to the State Reform School, or insane persons to the State Insane Asylum shall receive as a portion of his "actual expenses", mileage at the rate of nine cents (9c) per mile if travel be by a privately

owned vehicle. Additional mileage of nine cents (9c) per mile for each mile the prisoner or insane person is transported is not available when the transportation is to the State Prison, State Reform School, or State Insane Asylum.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.