

Opinion No. 74**Sheriffs, Entitled to Mileage When Travel to State Sheriff's Convention Is By Private Vehicle—County Commissioners, Determination of Suitable Transportation Is Made By—Automobiles, May Be Used By Officers Only When Suitable Transportation Cannot Be Had By Railroad or Bus.**

November 30th, 1949.

Mr. M. J. Traynor
County Attorney
Daniels County
Scobey, Montana

Dear Mr. Traynor:

You have requested my opinion as to the expenses a sheriff is entitled to receive for transportation to the State Sheriff's Convention and if such expenses are computed on a mileage basis, is the sheriff to receive meals and lodging in addition to such mileage?

You state that the Daniels County Sheriff used his own vehicle as a means of transportation to the State Sheriff's Convention. The sheriff submitted a claim for nine cents (9c) per mile in addition to a claim for meals and lodging. The County Commissioners have refused to honor the claim contending that the mileage can only be allowed to the extent of the minimum cheapest means of transportation, i.e. by bus or train.

Section 443, Revised Codes of Montana, 1935, as amended by Chapter 119, Laws of 1943, and as last amended by Chapter 58, Laws of 1949, provides for traveling expenses for officers attending certain conventions. Section 443, supra, as contained in Chapter 58, Laws of 1949, sets forth the general provisions pertinent to the allowance of convention expenses and the 1949 amendment added the following clause:

"Provided also that County Attorneys and Sheriffs are hereby authorized to attend their respective meeting or convention held within the State and are allowed actual traveling expenses not oftener than once a year for attending same."

The above quoted section allows the sheriff to attend the State Sheriff's Convention once a year and allows "actual traveling expenses." The act in no way attempts to define what "actual traveling expenses" shall consist of.

I shall first dispose of the question of whether or not the sheriff may drive his own private vehicle to the convention or whether he must go by bus or train inasmuch as such transportation would be cheaper. Section 4884.1, Revised Codes of Montana, 1935, as last amended by Section 2 of Chapter 93, Laws of 1949, relating to the mileage of all State and County officers provides "that in no case shall an automobile be

used as herein provided if suitable transportation can be had by railroad or bus." In construing the above quoted provision, Opinion No. 6, Volume 18, Report and Official Opinions of Attorney General, held that a determination of the suitability of railroad or bus transportation is dependent upon all the surrounding facts or circumstances, such as convenience to the officer, the time available for the trip, and other relevant considerations.

The determination as to whether or not transportation by railroad or bus is suitable in each particular instance shall be made by the Board of County Commissioners. The Board of County Commissioners by virtue of Section 4465, Revised Codes of Montana, 1935, supervises the official conduct of all County officers, and also by virtue of Section 4465.11, Revised Codes of Montana, 1935, must approve all claims against the County. The power to decide questions such as suitability of transportation as in the instant case is implicit in the two above mentioned statutes.

In determining what the "actual traveling expenses" allowed by Chapter 58, Laws of 1949, consist of, the provisions of Chapter 59, Laws of 1949, are enlightening. Chapter 59, Laws of 1949, amends Section 4885, Revised Codes of Montana, 1935, as amended, and relates to mileage and expense of sheriffs. Chapter 59, *supra*, provides that 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. The act further defines "actual expenses" as follows, "provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided." The mileage rate provided for in the act was nine cents (9c) per mile.

Since Chapter 58 and Chapter 59 of the Session Laws of 1949 both relate to the subject of travel expenses of sheriffs and such statutes are not inconsistent, they must be construed together when one or the other is being interpreted. The rule in Montana is that "all acts relating to the same subject, or having the same general purpose as the statute being construed, should be read in connection with such statute." *State v. Bowker*, 63 Mont. 1, 205 Pac. 961; *State ex rel. MacHale v. Ayers*, 111 Mont. 1, 105 Pac. (2d) 686.

In construing the above cited acts together it is only reasonable to find that if the Legislature intended that "actual expenses" in one act should include mileage at the rate of nine cents (9c) per mile, then "actual traveling expenses" in the other act should also be interpreted to include mileage at the rate of nine cents (9c) per mile. The absence of anything in the acts indicating a contrary intention supports this position.

The question as to whether or not the sheriff may include meals and lodging in his claim for expenses presents no difficulty whatsoever. Such items are included in actual expenses and it was the intention of the Legislature that the sheriff be reimbursed for such expenses.

Therefore, it is my opinion that sheriffs who attend the State Sheriff's Convention and who use a privately owned vehicle for transportation shall receive mileage at the rate of nine cents (9c) per mile if such travel by privately owned vehicle is authorized. Travel by a privately owned vehicle is authorized only if suitable transportation cannot be had by railroad or bus.

Sheriffs attending the State Sheriff's Convention are also entitled to actual expenses for meals and lodging.

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