

**Opinion No. 87****Sheriffs, Shall Receive Additional Mileage For Transporting Any Persons By Order of Court in Privately Owned Vehicle Except When Travel Is to State Institutions—Additional Mileage Shall Not Be Granted When Transportation Is Not Undertaken By Virtue of Court Order—**

- Held:**
- 1. When travel is by privately owned vehicle sheriffs shall receive an additional nine cents (9c) per mile for transporting a prisoner by order of court although such transportation is undertaken merely in the course of arresting the prisoner and bringing him to the County jail. However, this rule does not apply when the travel is to the State Prison, State Reform School, or State Insane Asylum.**
  - 2. Sheriffs shall not receive an additional nine cents (9c) per mile for transporting a prisoner by privately owned vehicle when such transportation was not undertaken by order of court but rather was necessary for the apprehension and transportation of such prisoner to the County jail.**

February 1st, 1950.

Mr. Robert J. Nelson  
County Attorney  
Cascade County  
Great Falls, Montana

Dear Mr. Nelson:

You have submitted for my consideration the following two questions relating to the mileage of sheriffs:

1. May the sheriff receive an additional 9c per mile for transporting a prisoner by order of court merely in the course of arresting such prisoner and transporting him to the County jail?
2. May the sheriff receive an additional 9c per mile for transporting a prisoner not by order of court but necessarily apprehended in pursuance of duty and transported to the County jail?

The provision of the Laws of Montana relating to the mileage of sheriffs is Section 4885, Revised Codes of Montana, 1935, as amended by Chapter 121, Laws of 1941, and as last amended by Section 1 of Chapter 59, Laws of 1949. Section 4885 is now Section 16-2723, Revised Codes of Montana, 1947. Section 1 of Chapter 59, *supra*, is as follows in part:

"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; . . ."

In Opinion No. 44, Volume 23, Report and Official Opinions of Attorney General, the above quoted Section was considered and I held therein that a sheriff who used 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 but that the sheriff shall not receive an additional nine cents (9c) for each mile the prisoner or insane person is transported.

With reference to your first question, it should be noted that Section 1 of Chapter 59, Laws of 1949, provides:

"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;".

The exception in the statute refers to travel to State Institutions as ruled upon in Opinion No. 44, Volume 23, *supra*, and has no application to the situation to which you refer. The statute makes it clear that when any aperson, other than the exceptions noted, is transported by court order the sheriff shall receive the additional nine cents (9c) per mile for transporting and dieting the prisoner. Consequently, I answer your first question in the affirmative.

In addition to Section 1 of Chapter 59, *supra*, there is a further provision of the Codes which answers both of the questions you have propounded. That is Section 4916, Revised Codes of Montana, 1935, as amended by Chapter 139, Laws of 1937, Chapter 121, Laws of 1941, and last amended by Section 2 of Chapter 59, Laws of 1949. Section 4916 is now Section 25-226, Revised Codes of Montana, 1947. This provision relates to the fees of sheriffs and insofar as it is pertinent to this opinion is as follows:

"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 nine cents (9c) 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 person 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 person is 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 above quoted Section specifically states that the sheriff shall receive mileage "for the person conveyed or transported under order of court" in addition to the mileage allowed the sheriff in going to get the person and returning. This language harmonizes with and lends weight to the answer I have given to your first question.

The portion of Section 2 of Chapter 59 which is quoted in this opinion also sets forth a specific answer to your second question. The act states that "the sheriff . . . in conveying a person under arrest before a magistrate or to jail . . . shall receive nine cents (9c) per mile for each mile actually traveled by him both going and returning." No provision is made for the additional mileage when the travel is not undertaken by court order.

The Act clearly makes a distinction between conveying a person without order of court and conveying a person by order of court. In the former instance the sheriff, if travel is by a private vehicle, shall receive mileage for every mile actually traveled. In the latter instance the sheriff, if travel is by a private vehicle, shall receive mileage for every mile actually traveled and shall receive additional mileage for the distance he transports the person being conveyed by order of court.

It is my opinion that when travel is by privately owned vehicle sheriffs shall receive an additional nine cents (9c) per mile for transporting a prisoner by order of court although such transportation is undertaken merely in the course of arresting the prisoner and bringing him to the County jail. However, this rule does not apply when the travel is to the State Prison, State Reform School, or State Insane Asylum.

Sheriffs shall not receive an additional nine cents (9c) per mile for transporting a prisoner by privately owned vehicle when such trans-

portation was not undertaken by order of court but rather was necessary for the apprehension and transportation of such prisoner to the County jail.

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