

Opinion No. 62

Sheriffs—Mileage—Apprehending
Fugitives Outside the County

Held: That the sheriff is entitled to his actual necessary expenses for trips made for the return of fugitives apprehended and arrested outside the county. If it is necessary to use a privately owned vehicle because suitable transportation cannot be had by railroad or bus then the sheriff is entitled to nine cents (9c) per mile for each mile actually traveled in going for and returning with such fugitive. The sheriff may not charge an additional nine cents (9c) per mile for the return trip in which he is transporting fugitives.

February 5, 1952.

Mr. John D. French
County Attorney
Lake County
Polson, Montana

Dear Mr. French:

You have requested my opinion on the proper interpretation to be placed on Section 25-226, Revised Codes of Montana, 1947, as amended by Chapter 59, Session Laws of 1949, insofar as the section pertains to the fees allowed sheriffs while transporting fugitives apprehended and arrested outside the County but within the State.

At the outset may I refer you to Opinion No. 44, Volume 23, Official Opinions of the Attorney General in which the mileage allowable to sheriffs while transporting prisoners to the state prison, reform school and insane asylum is discussed.

Prior to the enactment of Chapter 59, supra, Section 25-226, sub-section 4, provided in part as follows:

“*** Nor shall this act apply to trips made for the return of fugitives apprehended and arrested outside the county for which the sheriff shall receive the actual necessary expenses in going for and returning with such fugitive. ***” (Emphasis supplied)

However, Chapter 59, supra, amended this portion of Section 25-226, by

adding the following proviso onto the end of the portion of Section 25-226 above quoted:

“provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided.”

Ever since the enactment of Chapter 89, Session Laws of 1929, the sheriff has been allowed but his actual expenses for trips made for the return of fugitives apprehended and arrested outside the county. Chapter 59, Session Laws of 1949, does not purport to change this policy as the sheriff is still to get his “actual necessary expenses incurred in going for and returning with such fugitive.” However, the 1949 amendment provides that if the sheriff travels in a privately owned vehicle that “the mileage rate shall be allowed as herein provided.” This last clause obviously refers to sub-section 3, Section 25-226, as amended by Chapter 59, Laws of 1949. This sub-section provides that the sheriff shall receive nine cents (9c) per mile. The nine cents per mile is allowed to cover the cost of gasoline, oil, maintenance and depreciation for the privately owned vehicle. In addition to the nine cents per mile the sheriff is entitled to receive recompense for his actual expenditures for food, lodging, etc. for both himself and the fugitive he is returning.

The question arises as to whether the sheriff is entitled to an additional nine cents per mile for the distance that the fugitive is transported. Sub-section 3, Section 25-226, as amended, provides that the sheriff is “entitled to the same mileage and his actual expenses for the person conveyed or transported **under order of court within the county.**” The sub-section also provides that where more than one person is transported but one mileage shall be charged. However, it is my opinion that these provisions do not apply to trips made for the return of fugitives from outside the county, but rather only apply to situations where the sheriff is transporting persons under an order of court and **within the county.** Cf. Opinion No. 87, Volume 23, Official Opinions of the Attorney General.

It should be noted that travel by a privately owned automobile is the exception rather than the rule because

Section 59-802, Revised Codes of Montana, 1947, as amended by Chapter 93, Session Laws of 1949, provides that in no case shall an automobile be used if suitable transportation can be had by railroad or bus.

Therefore, it is my opinion that the sheriff is entitled to his actual necessary expenses for trips made for the return of fugitives apprehended and arrested outside the county. If it is necessary to use a privately owned vehicle because suitable transportation cannot be had by railroad or bus then the sheriff is entitled to nine cents (9c) per mile for each mile actually traveled in going for and returning with such fugitive. The sheriff may not charge an additional nine cents (9c) per mile for the return trip in which he is transporting fugitives.

Very truly yours,
ARNOLD H. OLSEN
Attorney General