

VOLUME NO. 34

Opinion No. 14

**SHERIFFS - Insurance expense, privately owned automobiles.
Section 16-2724, R.C.M. 1947.**

- HELD:**
- 1. County commissioners are required by section 16-2724, R.C.M. 1947, to provide insurance on privately owned motor vehicles used by a sheriff, an undersheriff, and deputy sheriffs on official business.**
 - 2. The insurance to be furnished shall be comprehensive and collision, as well as public liability.**
 - 3. The board must pay only that portion of the premium that approximates the time such vehicle will be used on official business.**
 - 4. If a sheriff, an undersheriff or deputy sheriff has been assigned the use of a county-owned or leased vehicle, the board has no obligation to provide insurance for the privately owned vehicles of such officer.**

September 13, 1971

Mr. James Oleson
Flathead County Attorney
P.O. Box 1057
Kalispell, Montana 59901

Dear Mr. Oleson:

You have requested my opinion on the following questions pertaining to the furnishing by the county of insurance for privately

owned motor vehicles used by the sheriff, undersheriff and deputy sheriffs:

1. Is the board of county commissioners required by chapter 340, Montana Session Laws, 1971, section 16-2724(2), Revised Codes of Montana, 1947, to provide insurance for privately owned motor vehicles used by a sheriff, an undersheriff and deputy sheriffs?
2. If such insurance must be so furnished, what type of insurance must be obtained?
3. If such insurance must be so furnished, must the board pay for the entire premium?
4. Under what circumstances, if any, is the board not required to furnish insurance on private vehicles of a sheriff, an undersheriff or deputy sheriffs?

Section 2 of chapter 340, Montana Session Laws, 1971, section 16-2724(2), R.C.M. 1947, reads as follows:

“The board of county commissioners shall provide liability insurance for not more than one (1) privately owned vehicle used by the sheriff, not more than one (1) privately owned vehicle used by the undersheriff, and not more than one (1) privately owned vehicle used by each deputy sheriff when the vehicles are used on official business. The insurance shall be paid for from county funds and shall provide full comprehensive and collision coverage plus minimum coverage of one hundred thousand dollars (\$100,000) for each person for bodily injury and medical expenses, three hundred thousand dollars (\$300,000) for all persons per accident, and fifty thousand dollars (\$50,000) per accident for property damage. This section shall not apply to counties furnishing motor vehicles to the sheriff's department pursuant to the provisions of section 16-2724, R.C.M. 1947.”

1. In your first question you ask if a board of county commissioners is required to provide the insurance referred to in the above section. Such section states in part that the “. . . commissioners shall **provide liability insurance . . .**” (Emphasis supplied) It appears the legislature intended this language to be mandatory, especially in view of the fact that section 16-2724, R.C.M. 1947, before amendment by chapter 340, Montana Session Laws, 1971, provided in part that the “. . . commissioners may **purchase or lease motor vehicles . . .**” (Emphasis supplied) It seems clear that if the legislature had intended to make such new insurance requirement permissive, it surely could and would have done so. The Montana Supreme Court has held that “shall” is

mandatory, not permissive. See **Abshire v. School Dist. No. 1 of Silver Bow County**, 220 P.2d 1058, 124 Mont. 244; **Phillips Aviation Co. v. Superior Court for Los Angeles County**, 54 Cal. Rptr. 415, 420, 246 CA.2d 46. Therefore, in answer to your first question, it is my opinion that the board of county commissioners must provide insurance of the type hereinafter specified for privately owned motor vehicles of a sheriff, an undersheriff, and deputy sheriffs when such vehicles are used on official business.

2. Your second question involves the type of insurance that must be furnished. The first sentence of the section in question provides that "liability insurance" shall be furnished. The second sentence of the section provides that there shall be provided comprehensive, collision and public liability insurance. To ascertain the intention of a legislature an act must be read as a whole and, when possible and where possible, conflicting and ambiguous parts made to harmonize. **Aleksich v. Industrial Accident Fund**, 151 P.2d 1016, 116 Mont. 127. Reading the section as a whole, it seems clear that it was the intent of the legislature, when they used the language "liability insurance" in the first sentence, to describe such insurance in a general manner and not in a technical sense. This would appear true as later in the second sentence the type of insurance to be furnished is described in detail. Therefore, in answer to your second question, it is my opinion that full comprehensive and collision insurance, together with public liability insurance in the limits stated in the statute, must be furnished.

3. Your third question involves who will pay the premium for such insurance so required. The statute provides that the insurance shall be provided by the board ". . . when the vehicles are used on official business . . .". It seems clear that the legislature intended the word "when" to mean "during the time". In other words, the board is only obligated to pay that portion of the premium for insurance that in the board's opinion approximates the time such vehicle will be used on official business. The county can pay its proportionate share of a blanket group policy on all eligible cars in the county with the sheriff, undersheriff, and deputy sheriffs paying their share, or the board can require each eligible individual to obtain his own insurance and make a claim to the county for reimbursement of the county's applicable share as hereinabove provided. Therefore, in answer to your third question, it is my opinion that the board is obligated to pay only that portion of the premium for such insurance that in the board's opinion approximates the time such vehicle will be used on official business during the policy period.

4. The last sentence of section 16-2724, R.C.M. 1947, provides as follows:

“This section shall not apply to counties furnishing motor vehicles to the sheriff’s department pursuant to the provisions of section 16-2724, R.C.M. 1947.”

It would appear that what the legislature intended by the above language was that if a sheriff, an undersheriff or a deputy sheriff in a county has been assigned the use of a county-owned or leased vehicle, then no insurance need be provided by the board for the privately owned vehicles of such law officers. Therefore, in answer to your fourth question, it is my opinion that if a sheriff, undersheriff or deputy sheriff has been assigned the use of a vehicle purchased or leased by the county and furnished to the sheriff’s office under the terms of section 16-2724, R.C.M. 1947, the board of county commissioners is under no obligation to provide any insurance for the privately owned vehicle of any such sheriff, undersheriff or deputy sheriff.

THEREFORE, IT IS MY OPINION that:

1. Under the provisions of section 16-2724, R.C.M. 1947, the board of county commissioners must provide full coverage insurance for privately owned motor vehicles of a sheriff, an undersheriff, and deputy sheriffs when such vehicles are used on official business.
2. The type of automobile insurance to be furnished shall be full comprehensive, collision and public liability insurance in the limits specified in section 16-2724, R.C.M. 1947.
3. The board of county commissioners is obligated to pay that portion of the premium for such automobile insurance that in the board’s opinion approximates the time such vehicle will be used on official business during the policy period.
4. If a sheriff, undersheriff or deputy sheriff has been assigned the use of a vehicle purchased or leased by the county and furnished to the sheriff’s office under the terms of section 16-2724, R.C.M. 1947, the board of county commissioners is under no obligation to provide any insurance for the privately owned vehicle of any such sheriff, undersheriff or deputy sheriff.

Very truly yours,

ROBERT L. WOODAHL
Attorney General