

VOLUME NO. 36**Opinion No. 70**

SHERIFFS — Expenses — Delivery of persons to state institutions; Section 16-2723 and 59-801, Revised Codes of Montana 1947.

HELD: Under section 16-2723 and 25-226, R.C.M. 1947, a sheriff may be reimbursed for actual expenses for which he has vouchers incurred in renting an aircraft to transport prisoners to the Montana State Prison or to transport prisoners from the Montana State Prison to the county jail for trial, provided flying is the least expensive reasonable means of transporting the prisoners.

April 12, 1976

Mr. Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

May a sheriff be reimbursed for expenses incurred in renting an aircraft to transport prisoners to the Montana State Prison at Deer Lodge or to transport prisoners from the Montana State Prison to the county jail for trial?

With your letter you have attached a cost approximation indicating that approximately \$110.00 per prisoner would be saved by allowing you to fly prisoners from Billings to Deer Lodge.

Section 16-2723, R.C.M. 1947 provides in pertinent part as follows:

Sheriffs delivering prisoners at the state prison or mentally ill persons at the state hospital, 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 expense 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 department of

administration or by the board of county commissioners, as the case may be, and paid out of the same money in the same manner as are other expense claims against the state or counties, and sheriffs for such expenses, provided that in determining the actual expense, if travel be by 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 a mileage allowance as provided in section 59-801. The sheriff shall also be reimbursed for actual and necessarily incurred expenses for transporting, lodging and meals of person(s) ordered by the court as provided in section 59-801.

Similarly, section 25-226 provides:

...the sheriff shall receive for each mile actually traveled ... in conveying a person under arrest before a magistrate or to jail, only his actual expenses when such travel is made by railroad, or airline, and when travel is other than by railroad, or airline, he shall receive a mileage allowance as defined in Section 59-801 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 the 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;....

SECTION 59-801, however, provides for mileage for all officers "except sheriffs". Because section 59-801 was enacted after sections 16-2723 and 25-226, it must be assumed that the legislature did not intend to provide for mileage for sheriffs in section 59-801.

Therefore, I must refer back to the language of section 16-2723 which provides that sheriffs shall receive actual and necessary expenses incurred in transporting prisoners to the prison and for transporting persons under court order. The language of section 25-226 giving the sheriff actual expenses incurred in conveying a person under arrest to jail or before a magistrate and in transporting persons under order of court must also be considered.

I interpret these sections to authorize sheriffs to employ the least expensive reasonable means of transporting prisoners to and from the state prison. I am of the opinion that, if flying prisoners is the most inexpensive reasonable means of transporting them, as you have indicated, then that method of transportation is allowed under section 16-2723 and a sheriff should be reimbursed for all actual and necessary expenses so incurred for which he has vouchers.

THEREFORE, IT IS MY OPINION:

Under section 16-2723 and 25-226, R.C.M. 1947, a sheriff may be reimbursed for actual expenses for which he has vouchers incurred in renting an aircraft to transport prisoners to the Montana State Prison or to transport prisoners from the Montana State Prison to the county jail

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for trial, provided flying is the least expensive reasonable means of transporting the prisoners.

Very truly yours,
ROBERT L. WOODAHL
Attorney General