

Opinion No. 62-86

July 11, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Glenn B. Neumeyer, Assistant District Attorney, County Court House Building, Las Cruces, New Mexico

QUESTION

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What mileage fee is to be allowed to Sheriffs for the serving of legal process?

CONCLUSION

Nine cents per mile.

OPINION

ANALYSIS

Section 5-4-8, N.M.S.A., 1953 Compilation (P.S.) provides that the maximum rate of mileage allowed and paid from public funds for the use of privately owned conveyances shall be nine cents a mile for the distance actually traveled in connection with the performance of official business. This is the general statute which now covers and authorizes sheriffs' mileage allowances.

Section 15-40-21, N.M.S.A., 1953 Compilation, which had provided for a twelve and one-half cent per mile figure, was in conflict with Section 5-4-8, supra (Attorney General Opinion No. 6200, 1955), and was repealed by the 1961 Legislature for that reason.

As mentioned, Section 5-4-8, supra, is the statute which controls the permissible mileage allowance, but insofar as reimbursement for serving process on a jury panel is concerned Section 15-40-21.1 must also be examined. It provides that any:

". . . sheriff, deputy sheriff or other county peace officer reimbursed under section 5-4-8 . . . shall charge jury venire mileage only once to the farthest point actually traveled in service of jury venire."

It is our view that a typical situation which this provision is designed to cover is when one jury panel member lives three miles from the sheriff's point of departure, another lives five miles from the departure point in the same direction and still another lives seven miles from the departure point in the same direction. In such a case the

Legislature did not intend to permit the officer to add the three, five and seven together and charge for a total of fifteen miles (one-way) when he had actually traveled only seven miles. Nor, in the absence of necessity, did the Legislature intend to permit the sheriff to make three separate trips to serve the three people discussed in the above hypothetical situation.

On the other hand, when the sheriff must travel five miles in one direction to serve a panel member and ten miles in a different direction to serve another, we believe the legislative intent is to allow him mileage for the fifteen miles.

The only reasonable interpretation of Section 15-40-21.1, supra is that the Legislature intended the sheriff to be reimbursed only for the actual and necessary miles traveled in serving the entire panel.

Since the place where the panel member was served is listed by the sheriff on the summons, and since the summons are subsequently filed with the District Court, it would seem that any dispute relative to the actual and necessary miles traveled could be resolved.