

Opinion No. 13-1112

September 27, 1913

BY: H. S. CLANCY, Assistant Attorney General

TO: Honorable M. C. Stewart, Sheriff of Eddy County, Carlsbad, N. M.

SHERIFF'S EXPENSES.

Sheriff entitled to actual expenses for transporting prisoners to Penitentiary.

OPINION

{*288} I am in receipt of your letter of the 25th inst. in which you ask for the opinion of this office in regard to the construction to be placed upon the item contained in Section 7, Chapter 83, Laws of 1913, under the heading "For Sheriff's for Transporting Prisoners to Penitentiary," and inquire whether you, as sheriff, should be allowed expenses for the following enumerated items:

1. Necessary traveling expenses for myself including railroad ticket, hotel bills, in fact, all expenses incurred by reason of my being a traveler in discharge of official duties.
2. \$ 5.00 a day for each and every guard named in the certificate of the District Judge.
3. Traveling expenses of each of these guards, including railroad ticket, hotel bills, in fact, all expenses incurred by reason of their being travelers in discharge of official duties.
4. Necessary traveling expenses of the prisoner or prisoners, including railroad ticket, hotel bills, in fact, all expenses incurred.

In reply I have to say that it is the opinion of this office that a sheriff is entitled to payment, by the state, for the transportation of prisoners to the penitentiary, all necessary traveling expenses and hotel bills of himself and all the necessary guards, certified by the Judge of the District Court, together, of course, with all necessary traveling expenses of the prisoners. So far as the payment of \$ 5.00 a day for each and every guard is concerned, the State Auditor informs me that he will allow such a charge, considering the same as being a reasonable one, although such a per diem is not specifically provided for in the act of 1913, which merely states that necessary guards may be employed. It would, therefore, seem that any account rendered by you as sheriff for transporting prisoners to the penitentiary, based upon the items above referred to, should be audited and paid by the state.