

## Opinion No. [30-14]

September 4, 1930

**BY:** M. A. OTERO, JR., Attorney General

**TO:** Mr. Judson G. Osburn, District Attorney, Roswell, New Mexico.

COUNTY OFFICERS -- Sheriff -- mileage allowed for transporting prisoners and insane persons.

### OPINION

I regret very much to find that your favor of August 22nd remains unanswered. It arrived during the time that I was absent at the National Guard Encampment at Las Vegas and, since I have been away from the office quite a bit since that time I have been unable to get around to answering it sooner.

You ask for a written opinion with regard to expense items properly to be allowed to sheriffs for transporting prisoners and insane persons from their respective counties to the penitentiary or to the asylum. What you particularly desire to know is whether or not the sheriff, when transporting prisoners or insane patients, if traveling by automobile and if conveying more than one prisoner or patient in the same conveyance at one time, is entitled to make the charge of 12 1/2 cents per mile for each prisoner or patient so conveyed.

In reply thereto will state that section 33-4430 of the Code of 1929 simply provides that the sheriffs of the various counties shall be entitled to "actual expenses incurred by themselves in conveying prisoners to the penitentiary, and also to the actual expenses incurred by them for such necessary guards as are authorized by law to be employed to assist in guarding such prisoners, and also to the actual expenses incurred in conveying such prisoners." Section 33-4426 of the Code of 1929 limits the mileage to be paid to sheriffs for travel "in serving any warrants, process, **order** \* \* \*" to 12 1/2 cents per mile.

In view of the foregoing statutes, it has always been the custom in the Auditor's office, -- at least for the last four years, -- not to allow 12 1/2 cents mileage for every single person traveling with the sheriff in his automobile, but rather, in view of the long distances which many of the sheriffs have to come in order to reach Santa Fe, as is the case for instance with the sheriff of Chaves County, to allow them straight railroad fare for each person, and thus save money for the State rather than to allow them 12 1/2 cents per mile for each person.

I believe that it is a matter which rests with the State Auditor in the exercise of a sound discretion, having in mind at all times the saving of money to the State. You must bear in mind the fact that if the sheriff of any county, for instance the sheriff of Chaves County, should take a notion to transport any given number of prisoners and guard to

Santa Fe he could, if he so desired, transport them all by railroad and get a pullman for each and every one of them. Now then, if the sheriff decided to convey them in an automobile or automobiles instead it is conceivable that the mileage which he would charge, and which some auditors might allow, would be so high that it would more than double the railroad fare. Consequently, as I said before, it has been the custom of the Auditor's Office to exercise a little common sense in these matters. I hope I have made the proposition clear.

With kindest personal regards, believe me,