

Opinion No. 44-4544

July 17, 1944

BY: C. C. McCULLOH, Attorney General

TO: C. R. Sebastian, State Comptroller, Santa Fe, New Mexico

We are in receipt of your letter of July 11, 1944, in which you state that certain county sheriffs have been submitting claims for mileage reimbursement for mileage having been traveled within the limits of municipalities which maintain their own police forces. In view of these facts, you ask our opinion as to whether or not such sheriffs are entitled to such mileage.

Section 15-3802 of the 1941 Compilation prescribing the duties of sheriffs is in part as follows:

"The sheriff shall be conservator of the peace within his county."

While other sections of the law prescribe particular duties upon the sheriff, this section gives the sheriff jurisdiction co-extensive with his county. Section 10-408 of the 1941 Compilation, insofar as it applies to sheriffs, is as follows:

"Provided further, that the sheriffs, deputy sheriffs and other peace officers of the several counties of this state shall be paid mileage at the rate of eight cents (\$.08) per mile, for the distance actually and necessarily traveled in serving any warrants, process, order, citation, summons, jury venire, or decree of any courts now provided by law, or in the performance of any official business: that in serving any jury venire mileage shall only be charged once to the farthest point actually traveled in serving such venire."

Section 15-4108 relating to expenses of sheriffs provides in part as follows:

"All traveling expenses actually and necessarily incurred by sheriffs and their deputies while engaged in the service of criminal process issued out of the Supreme Court or a district court, or when issued by a justice of the peace in the state, if the issuance thereof is approved in writing by the district attorney or his assistants, shall be paid by the respective counties in behalf of which the same may be incurred. The actual expenses incurred in or about the service of civil process shall likewise be paid. Such expenses shall be paid only upon the rendition of itemized, sworn accounts filed in the county clerk's office, approved by the county commissioners and district judge. In the discretion of the district judge such expenses may also be paid when incurred in the attempt to discover or arrest any person charged with a felony, but only upon the rendition of like sworn accounts filed as aforesaid and approved in writing by the district judge."

In view of these sections, it is seen that the sheriff is entitled to reimbursement for mileage traveled only when he is performing the services listed in these two sections and, further, that he is entitled to such reimbursement only in the event his expenses are approved by the county commissioners or district judge.

In view of the foregoing, it is my opinion that a sheriff is entitled to mileage only for the services listed as aforesaid when his itemized sworn account is approved by the county commissioner or district judge. I might add that any abuse of the sheriff's right to mileage can easily be controlled by either the county commissioners or district judge who would have the facts before them.

Trusting the foregoing fully answers your question, I remain

By ROBERT W. WARD,

Asst. Atty. General