

Opinion No. 55-6200

June 23, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: C. C. Chase, Jr., Esquire, District Attorney, Third Judicial District, Las Cruces, New Mexico

Your recent request for opinion concerning construction of §§ 5-4-8 and 15-40-21, N.M.S.A., 1953, has been received.

Section 15-40-21, in part, provides as follows:

"The sheriffs of the several counties of this state shall be paid mileage at the rate of twelve and one-half (12 1/2) cents a 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: Provided, that in serving any jury venire mileage shall only be charged once to the farthest point actually traveled in serving such venire. . . ."

Section 5-4-8, in part, provides 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 nine cents (9c) 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 is, serving any jury venire mileage shall only be charged once to the farthest point actually traveled in serving venire."

The portion of § 15-40-21 cited above was passed in its present form in 1899. Section 5-4-8, in the form above quoted, was passed in 1947, § 1, Chapter 14, Laws of 1947. The Act wherein § 5-4-8 was passed specifically repealed all acts and parts of acts in conflict therewith. See § 2, Chapter 14, Laws 1947.

It is, therefore, apparent that there exists an irreconcilable conflict between the two above sections. However, § 5-4-8 and the act which created it, being passed after § 15-40-20, and specifically repealing all acts in conflict therewith, is now the valid and existing law.

For that reason, it is the opinion of this office that sheriffs, deputy sheriffs and other peace officers of the several counties can legally receive mileage at the rate of nine (9c) cents per mile and no more.

We attach no significance to the fact that § 5-4-8 specifically provides that the mileage therein is allowed and paid for the use of "privately owned conveyances", and that § 15-

40-21 makes no reference to such conveyances. It is apparent that § 15-40-21, when it existed and was a valid law, applied also only to a situation where the sheriffs were employing their own private means of conveyance.

I trust that this answers your inquiry satisfactorily.

By Santiago E. Campos

Assistant Attorney General