

Opinion No. 43-4404

November 5, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Robert W. Reidy, Assistant District Attorney, Albuquerque, New Mexico

We are in receipt of your letter of November 2, 1943, in which you ask the following questions:

"1. What are the fees which are payable to guards which are necessary in the transportation of prisoners.

"2. For every prisoner who is transported is the Sheriff allowed fees for both the deputy, or the person who has to drive the automobile, plus fees for a guard."

The answers to these two questions are found in Sections 15-4108 and 15-4109 of the 1941 Compilation.

Section 15-4108 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 * * * the employment and necessary traveling expenses of guards authorized by law to be employed, and the necessary traveling expenses of prisoners, shall be paid by the respective counties in behalf of which the same may be incurred. * * *"

Section 15-4109 provides in part as follows:

"The sheriff * * * shall also be allowed and paid by the county, two dollars (\$ 2.00) per day for each guard actually employed in assisting with such prisoner, but shall not employ more than one guard unless there be more than three prisoners; for every two additional prisoners, he shall be entitled to one guard. * * *"

The compilers have suggested that the portion of Section 15-4109, authorizing the payment of \$ 2.00 per day for each guard has been repealed through implication by Section 15-4108, inasmuch as this latter section provides for the repayment to the sheriff of the expenses incurred by him for the employment of guards.

With this conclusion I cannot agree, since repeals by implication are not favored by our law, and since the above quoted section of 15-4108 is not necessarily inconsistent with the quoted portion of Section 15-4109.

Section 15-4109 authorizes the sheriff to employ guards under certain circumstances, and for a certain amount. Section 15-4108 merely provides that when the sheriff hires

guards authorized by law to be employed, he shall be reimbursed for their employment and necessary traveling expenses. This section neither authorizes the employment of guards nor specifies how much he may pay them. Thus, all section 15-4108 does is to authorize the reimbursement of the sheriff of the amount he is authorized to pay guards when he is authorized by law to employ them.

In answer to your first question, it is my opinion that \$ 2.00 per day is the only fee which is allowable to guards which are necessary in the transportation of prisoners.

In answer to your second question, I do not find that the sheriff is ever allowed fees for his deputies, who are paid a salary, or any person other than the guards, as authorized under Section 15-4109. Your attention is also directed to the above quoted portion of Section 15-4109 wherein the number of jail guards which the sheriff may employ is specified.

In conclusion I wish to make it clear that I have not intended to cover the transportation of prisoners to the penitentiary, since it did not appear to me that your request covered this situation, and since the conclusion as to the transportation of such persons might have been different as a result of the proviso contained in Section 15-4108.

Trusting that the foregoing sufficiently answers your questions, I remain

By ROBERT W. WARD,

Assistant Attorney General