

**SHERIFFS - fees; subpoenas, mileage. Section 25-209, R.C.M. 1947.**

**HELD: A sheriff may not charge the department of labor and industry, which is an agency of the state, fees for mileage for service of process.**

June 26, 1970

Mr. Tony Softich  
Assistant Commissioner of Labor  
Department of Labor and Industry  
1336 Helena Avenue  
Helena, Montana 59601

Dear Mr. Softich:

I am in receipt of your letter of May 6, 1970, in which you asked whether the sheriffs in Montana serving subpoenas issued by the department of labor and industry may charge the state mileage for delivering the same. Section 25-209, Revised Codes of Montana, 1947, states:

“No fees must be charged the state, or any county, or any subdivision thereof, or any public officer acting therefor, or in habeas corpus proceeding for official services rendered, and all services must be performed without the payment of fees.”

In *State v. Story*, 53 Mont. 573, at page 578, the Supreme Court construed section 3167, Revised Codes, 1907, and stated that fees included “. . . the sheriff’s mileage as well as his other charges . . .”

Section 3167, R.C.M. 1907, is the parent section for section 25-226, R.C.M. 1947. The two sections are substantially the same. Subsection 3 of section 25-226, R.C.M. 1947, includes mileage under the boldface heading of “Fees of Sheriffs.”

Further, Opinions of the Attorney General, Vol. 20, opinion no. 139, has dealt with this same question in regard to fees in the service of papers in a habeas corpus proceeding. Attorney General Bottomly referred to *State v. Story*, *supra*, in holding that fees under the provisions of section 4893, R.C.M. 1935 (parent section of 25-209, R.C.M. 1947) include mileage. The fees for service of pleadings in a habeas corpus proceeding are in no way distinguishable from the fees referred to in the first portion of section 25-209, R.C.M. 1947.

The department of labor and industry is an agency of the state and therefore falls under the purview of section 25-209, R.C.M. 1947.

THEREFORE, IT IS MY OPINION that fees for mileage for service of process are included under the immunities of section 25-209, R.C.M. 1947, and a sheriff may not charge the department of labor and industry, an agency of the state, for the same.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General