



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

GERALD C. MANN  
~~XXXXXXXXXXXXXXXXXX~~  
ATTORNEY GENERAL

Hon. H. A. Hodges  
County Auditor  
Williamson County  
Georgetown, Texas

Dear Sir:

Opinion No. 0-1445

Re: When the sheriff makes a trip to serve a process, either civil or criminal, and fails to locate the person on whom the process is to be served, is he entitled to the 4¢ per mile as set out in Article 3899(b)?

Your request for our opinion on the above stated question has been received by this department.

Article 3899(b), Revised Civil Statutes, regarding certain officers who receive a salary as compensation for their services, reads in part as follows:

"....The Commissioners' Court of the county of the sheriff's residence may, upon the written and sworn application of such officer, stating the necessity therefor, allow one or more automobiles to be used by the Sheriff in the discharge of official business, which, if purchased by the county shall be bought in the manner prescribed by law for the purchase of supplies and paid for out of the general fund of the county and they shall be reported and paid in the same manner as herein provided for other expenses.

"Where the automobile or automobiles are owned by the Sheriff or his Deputies, they shall be allowed four (4¢) cents for each mile traveled in the discharge of official business, which sum shall cover all expenses of the maintenance, depreciation and operation of such automobile. Such mileage shall be reported and paid in the same manner prescribed for other allowable expenses under the provisions of this section. No automobile shall be allowed for any Deputy Sheriff except those regularly employed in outside work. It shall be the duty of the County Auditor, if any, otherwise the commissioners' court, to check the speedometer reading of each of said automobiles, owned by the county once each month and to keep a

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public record thereof; no automobile owned by the county shall be used for any private purpose...."

Our statutes specifically provide certain fees for mileage that a sheriff is entitled to receive when serving both civil and criminal process when such service is actually made; however, this department has repeatedly held that a sheriff cannot legally charge fees for mileage traveled in attempting to serve civil or criminal process, meaning those fees provided by statute for serving such process.

Referring to Article 3899, Section (b), supra, we quote from an opinion written by Hon. Joe J. Alsup, Assistant Attorney General, addressed to Hon. J. A. Belger, County Auditor, Travis County, Austin, Texas, January 13, 1936, as follows:

"Under the terms of said law we think it is evident that such mileage must be considered as an expense and not as a fee. A fee is somewhat a remuneration for services rendered while the four (4¢) cents per mile spoken of herein is mere in the form of remuneration for money expended. We, therefore, conclude that the same could in no wise be considered a fee."

You are respectfully advised that it is the opinion of this department that when a sheriff is acting in good faith and receives a salary as compensation for his services he should be paid the sum of four (4¢) cents for each mile traveled by automobile while attempting to serve either civil or criminal process upon the person whom the process is to be served although the sheriff fails to serve such process, provided the automobile is owned by the sheriff.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours  
ATTORNEY GENERAL OF TEXAS  
s/ Ardell Williams  
By

Ardell Williams  
Assistant

AW:AW/cg

APPROVED SEPTEMBER 23, 1939  
s/ Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee  
By BWB, Chairman