STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#93062

NO.
STATE OF NEBRASKA
OFFICIAL
AUG 4 1993
DEPT. OF JUSTICE

DATE: July 29, 1993

SUBJECT: County Sheriffs - Mileage Fees

REQUESTED BY: John Breslow, State Auditor

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion on two questions pertaining to the payment of mileage fees to county sheriffs under Neb. Rev. Stat. § 33-117 (1988). Your first question is whether mileage charges allowed county sheriffs are considered "income" of the county within the meaning of Neb. Rev. Stat. § 23-903 (1991) which must be reflected in the county budget document.

Section 33-117 provides, in part: "(1) The several sheriffs shall charge and collect fees at the rates specified in this section. . .", including fees for "traveling each mile actually and necessarily traveled within or without their several counties in their official duties, ..." Subsection (3) of § 33-117 further provides that "[t]he sheriff shall, on the first Tuesday in January, April, July, and October of each year, make a report to the county board showing (a) the different items of fees, <u>except mileage</u>, collected or earned, from whom, at what time, and for what service, (b) the total amount of the fees collected or earned by the officer since the last report, and (c) the amount collected or earned for the current year. He or she shall pay all fees earned to the county treasurer who shall credit the fees to the general fund or the county." (emphasis added).

David K. Arterburn
L. Jay Bartel
J. Kirk Brown
David T. Bydalek
Laurie Smith Camp
Elaine A. Chapman
Delores N. Coe-Barbee
Dale A. Comer
James A. Elworth
Lynne R. Fritz
Royce N. Harper
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein
Donald A. Kohtz
Joseph P. Loudon
Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Melson
Harold I. Mosher
Fredrick F. Neid
Marie C. Pawol
Kenneth W. Payne
Paul N. Potadle
Jan E. Rempe
James H. Spears
Mark D. Starr
John R. Thompson
Barry Waid
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

printed on recycled paper

In *Red Willow County v. Peterson,* 91 Neb. 750, 137 N.W. 987 (1912), the Nebraska Supreme Court, construing virtually identical language contained in a prior version of this statute, held that the inclusion of the phrase "except mileage" evidenced an intent by the Legislature to exclude such fees from those which the sheriff was required to report and pay over to the county treasurer. And, in *State ex rel. Tomka v. Janing,* 183 Neb. 76, 80, 158 N.W.2d 218, ___ (1968), the court held that mileage fees earned by a deputy sheriff pursuant to § 33-1217 "are the property of the deputy and not of the sheriff." The court further noted that such fees were also not property of the county. *Id.*

Thus, in response to your first question, mileage fees earned by a county sheriff under § 33-117 are property of the sheriff, and not property or "income" of the county subject to inclusion in the county budget document under § 23-903. Mileage fees permitted sheriffs under § 33-117 belong to the sheriff, not the county.

Your second question is whether a county sheriff may collect and earn mileage fees under § 33-117 when the sheriff does not use his or her personal vehicle, but, rather, uses a county vehicle.

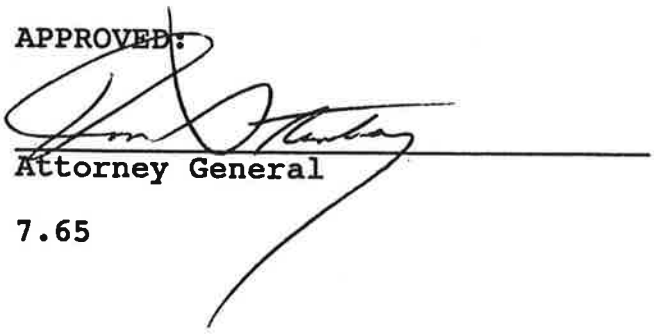
Neb. Rev. Stat. § 23-1112.01 (1991) provides: "No charge for mileage shall be allowed when such mileage accrues while using any motor vehicle owned by the State of Nebraska or by a county." This provision applies to mileage expense claims of "any county officer or employee. . . ." In a prior opinion, we noted that this language applied to all county officers, including the sheriff, and that, if the sheriff used a vehicle owned by the county, he or she would not be entitled to the statutory mileage allowance. 1957-58 Rep. Att'y Gen. 110 (Opinion No. 69, dated April 4, 1957). Consistent with our prior conclusion, we do not believe that mileage fees may be collected by a sheriff under § 33-117 when a county owned vehicle is used by the sheriff.

Very truly yours,

DON STENBERG
Attorney General

L. Jay Bartel
Assistant Attorney General

APPROVED:



Attorney General

7.65