

OPINION
45-57

November 13, 1945 (OPINION)

COUNTY OFFICERS

RE: Traveling Expenses

This will acknowledge the receipt of your letter of November 10, 1945, in which you ask the question:

"Is the sheriff, or his deputy, supposed to pay his own travel expense (meals and room) while away from home in the performance of his official duty? or is this a proper charge against the county?"

In an opinion rendered by Attorney General P. O. Sathre, under date of February 27, 1936, it was held:

"As to chapter 200 of the 1935 Session Laws regulating the expense accounts of county officials and other officers named, it applies only to such officers who by the nature of their official duties are permitted to collect sustenance and lodging expenses when attending to the duties of their office. For instance, a county auditor or a county treasurer or a state's attorney is by the very nature of his office required to perform his official duties at the county seat, and if he is called upon to perform any such duties away from the county seat, then in my opinion he will be entitled to sustenance and lodging expenses while performing those additional duties; but a sheriff or a superintendent of schools is by the very nature of his duties required to perform duties away from the county seat and at different places throughout the county, and then in my opinion such officer will not be entitled to sustenance or lodging expenses while performing such official duties which under the law by the very nature of his office he is required to perform at any place as may be necessary throughout the county. In other words, whether a county officer becomes entitled to sustenance or lodging expenses depends to a large extent upon the nature of the duties which he is called upon to perform on a given trip, and this is a matter which has to be passed upon by the board of county commissioners as fiscal agents of the county when the claims are filed by the officers claiming them."

It is our view that the opinion given by Attorney General P. O. Sathre in 1936 is still applicable under existing laws, and that a sheriff performing the ordinary duties required of him by law in his county is not entitled to reimbursement for meals and lodging.

NELS G. JOHNSON

Attorney General