Opinion No. 17

COURTS; Officers; court reporters; expenses when traveling—Sections 59-801, 59-802 and 93-1906, Revised Codes of Montana, 1947

Held: District Court Stenographers are entitled to actual and necessary expenses permitted by Section 93-1906. The mileage allowance of 7c per mile is not applicable to District Court Stenographers.

July 8, 1959

Mr. Emmet T. Walsh
County Attorney
Anaconda, Montana

Dear Mr. Walsh:

You have requested my opinion whether district court reporters are authorized actual travel expenses under Section 93-1906, R.C.M., 1947, or are limited to 7c per mile as prescribed by Sections 59-801 and 59-802, R.C.M., 1947, when using their private automobiles in transacting judicial business in a county of the judicial district other than the county in which they reside, where the judicial district is composed of more than one county.

Section 93-1906 was enacted as Section 375 C. Civ. Proc. 1895 and provided in part: "The stenographer is allowed in addition to the salary and fees above provided, in judicial districts containing more than one county, a mileage of ten cents per mile for the distance traveled by him from one county seat to another in the performance of his official duties, . . ." This section was amended by Chapter 80, L. 1909; Chapter 36, L. 1927 which provided: "The stenographer is allowed, in addition to the salary and fees above provided, in judicial districts comprising more than one county, his **actual and necessary expenses of transportation and living** when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto, . . .;" Chapter 73, L. 1945. The amendments of 1909 and 1945 pertained to amount of salary which the stenographer was to receive, while the amendment of 1927 also increased the stenographer's compensation from specific amount per mile to actual and necessary expenses of transportation and living.

Section 59-801 was enacted as Section 4590, Pol. C. 1895 and provided in part: "That members of the legislative assembly, state officers . . . shall be entitled to collect mileage at the rate of ten cents per mile for the distance actually travelled . . ." This section was amended by Chapter 16, L. 1933; Chapter 121, L. 1941; Chapter 201, L. 1947; Chapter 93, L. 1949; and Chapter 124, L. 1951. All of the amendments pertained to the allowance per mile and did not include or exclude persons from the allowance as originally enacted.

Section 59-802 was enacted by Chapter 80, L. 1923. The Section has always been amended by the same chapters of the session laws that amended Section 59-801. The original act granted mileage allowance for state officers using their own automobiles while on state business. The act was enacted subsequent to Section 93-1906 and did not express repeal that section. As enacted and amended the statute has always stated that the specific mileage allowance applies" . . . unless otherwise specifically provided by law . . ." Since Section 93-1906 speci-

fically authorize actual travel expenses for court stenographers Section 59-802 is not applicable to such officers by the very terms of the act.

Section 59-801 is a general statute and Section 93-1906 is a special statute. In that the latter statute was enacted at the same time as the former it is controlling. The Montana Supreme Court stated in re Stevenson, 87 Mont. 486, 498, 289 Pac. 566:

> ". . . Where one statute deals with a subject in general and comprehensive terms and another deals with a part of the same subject in a more minute and definite way, to the extent of any necessary repugnancy between them the special will prevail over the general statute."

In that Section 93-1906 was amended to include the actual and necessary expenses of the court stenographers subsequent to the enactment of Section 59-802, (1927 for the former and 1923 for the latter) it is the controlling statute.

Therefore, it is my opinion that district court stenographers are entitled to actual and necessary expenses of transportation and living, as stated in Section 93-1906, R.C.M., 1947. The mileage allowance of 7c per mile provided by Sections 59-801, and 59-802, R.C.M., 1947, is not applicable to district court stenographers.

Very truly yours,
FORREST H. ANDERSON
Attorney General