

Stock Inspectors, Mileage and Per Diem Of.

Stock inspectors are not entitled to mileage when traveling in the performance of official duties, under Section 2973 of the

Political Code. Under Section 4648, when subpoenaed as a witness in a criminal case, they are entitled to mileage at the rate of ten cents a mile each way, but are entitled to no per diem as a witness while attending criminal trial.

April 28, 1905.

Hon. Charles N. Pray, County Attorney, Fort Benton, Montana.

Dear Sir:—Your request for an opinion as to whether stock inspectors are entitled to per diem and mileage when attending as witnesses in criminal cases received.

Section 2973, Political Code, provides that stock inspectors and detectives are under the exclusive control and direction of the board of stock commissioners, and shall be paid for their services such sums as may be agreed upon by the board out of the funds provided therefor, but in no case must they receive any mileage.

By this section stock inspectors and detectives are prohibited from receiving any mileage while traveling in the performance of their duties as inspectors or detectives. Under this section they may enter into an agreement with the board to receive a salary in full payment of all services and traveling expenses, or they could agree to receive a salary and their actual and necessary traveling expenses, but it is the intention of the law to prohibit them from receiving a uniform amount for traveling expenses, to be designated as mileage.

However, this section does not apply to such inspectors or detectives when they are not traveling in the performance of their duties as inspectors and detectives but are traveling and attending courts as witnesses in obedience to a subpoena.

Section 4648, Political Code, provides that for attending in any criminal action before any court of record, referee or officer authorized to take depositions or commission witnesses shall receive a per diem of three dollars a day and ten cents per mile mileage, each way, in traveling to the places of trial or hearing; provided that no officer of the United States, the State of Montana, or of any county, incorporated city or town within the State of Montana shall receive any per diem when testifying in a criminal proceeding.

Stock inspectors come under this proviso. They are entitled to receive ten cents a mile each way when traveling as witnesses in a criminal case but are not entitled to any per diem during the time they are attending such trial or hearing.

Yours very truly,

ALBERT J. GALEN,

Attorney General.