

Constables, Mileage of. Mileage, for Service of Two or More Persons at One Time.

A constable is not entitled to charge double mileage where he arrests or subpoenas two persons at the same time.

Helena, Montana, June 10th, 1909.

Board of County Commissioners,

Helena, Montana.

Gentlemen:

I am in receipt of your letter of the 9th instant, requesting an opinion upon the following questions:

“I have been instructed by the board of county commissioners to write and ask that you furnish them a written opinion as to whether a person can act as a witness before the justice courts for two or more times in one day and receive \$1.50 for each case.”

Also:

"If a constable is entitled to separate mileage for himself in each case where he arrests more than one person at a time."

The first question submitted was submitted by the county attorney of your county, and an opinion given thereon on June 9, 1909, a copy of which is herewith enclosed.

In answer to your second question, you are advised that section 3177, revised codes, defines the fees and mileage to be charged by constables, and among other things, provides as follows: °

"For mileage, the same as sheriff and under the same conditions."

And further on in the same section, it provides, as follows:

"When two or more persons are brought before a magistrate or to jail, at the same time or might have been so brought, the officer must be allowed but one mileage."

And said section further provides;

"When two or more persons are named in any warrant or subpoena, in the same or different actions in the hands of the officer, and such persons live in the same direction, but one mileage must be charged, as provided for the mileage of sheriffs, in civil actions."

The foregoing quotations clearly show that a constable is not entitled to charge double mileage where he arrests or subpoenas two persons at the same time; in other words, he can only charge one mileage for the longest distance actually traveled in making the arrest of several such persons.

Very truly yours,

ALBERT J. GALEN.

Attorney General.