

Justices of the Peace, Fees of, How Collected. Fees, of Justices, How Collected. Fines, How Remitted to Treasurer. Constable, Mileage of. Mileage, of Constable. Fees, Mileage and Expenses Not a Part of.

1. A justice of the peace should deduct from the fines collected in a case the costs thereof and remit the balance to the treasurer.

2. A constable receives ten cents per mile for his own travel, and actual expenses for transporting persons under arrest.

3. The mileage and expenses are not a part of the maximum \$500.00 which may be paid to a constable in any one year.

Helena, Montana, September 9, 1909.

Board of County Commissioners,

Helena, Montana.

Gentlemen:

I am in receipt of a letter from the clerk of your county, dated September 3, submitting for the consideration of this office, the following questions.

1. Should justices of the peace remit the total of all funds collected to the county and then file their bill for costs in cases, or should they deduct from the amount of the fine collected the costs of the case and remit only the residue?

2. Is a constable entitled to mileage for transporting a prisoner, or is he entitled only to his actual expenses?

3. Is the mileage or expenses paid a constable to be considered a part of the \$500.00 which the board is authorized to pay under the provisions of the last paragraph of section 3177, revised codes?

These questions will be answered in their order.

1. A justice of the peace should deduct from the fines collected in any particular case, the costs of the case and remit to the treasurer the balance, as provided in section 9715, revised codes.

State v. Court, 24 Mont. 36;

Opinions Attorney General, 1905-06, p. 185.

2. Under the provisions of section 3177, revised codes, the constable is entitled to receive

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

This, however, applies only to the constable and does not apply to the prisoner he is transporting, as it is provided in the subsequent paragraph of the same section that for the transportation of a prisoner he must be allowed his actual expenses. A constable is, therefore, entitled to receive ten cents per mile for distance he has actually and necessarily traveled; and in addition thereto the actual expenses he may have incurred in transporting persons held by him under arrest.

3. The mileage and expenses paid to a constable are not a part of the \$500.00 mentioned in the last paragraph of said section 3177. That paragraph deals only "with fees" and mileage and expenses in transporting prisoners are not fees.

Scharrenbroich v. Lewis and Clark Co., 33 Mont. 350;

Opinion of Attorney General to Hon. W. H. Trippet, March 23, 1909.

Yours very truly,

ALBERT J. GALEN,

Attorney General.