

County Commissioners, Mileage Of. Mileage, of County Commissioners.

County commissioners are entitled to receive ten cents per mile for the distance actually traveled in going to and returning from the county seat and their place of residence; and Section 3111 Revised Codes supercedes and takes the place of Section 3194 Revised Codes in this respect.

Helena, Montana, November 30, 1910.

Mr. Charles Kyle,
County Commissioner,
Cardwell, Jefferson County, Montana.

Dear Sir:—

Replying to your letter of November 22nd, requesting the opinion of this office as to the amount of mileage members of the board of county commissioners are entitled to receive in going to and returning from the county seat and his place of residence, I beg to say:

Section 3111, Revised Codes of Montana, 1907, under the title of "Salaries and Fees of Officers," provides:

"That members of the legislative assembly, state officers, county officers, township officers, jurors, witnesses and other persons who may be entitled to mileage, shall be entitled to collect mileage at the rate of ten cents per mile for the distance actually traveled, and no more."

Section 3194, Revised Codes, 1907, under the same title, provides that members of the board of county commissioners shall receive fifteen cents per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence.

Section 2893, Revised Codes of 1907, provides that each member of the board of county commissioners is entitled to ten cents per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence.

It will be noticed that there is a direct conflict between Section 3111 and Section 2893, and also a direct conflict between Section 2893 and Section 3194.

Section 3111 was approved March 7, 1895, and in accordance with Section 3561 of the Revised Codes of Montana, remains in full force and effect in like manner as if enacted after the adoption of the

codes of 1895, and Section 3194 is therefore amended by Section 3111. These sections being under the title of "Salaries and Fees of Officers," would, so far as they conflict with Section 2893 of the Revised Codes, prevail; so we may eliminate the provisions of Section 2893 from our consideration of this question.

In the case of *Wade v. Lewis and Clark Co.*, reported in 24 Mont., p. 335, the supreme court of this state construed Section 3111, and held in that case that this section was enacted for the purpose of voicing further the legislative will that statutes then in force which prescribed a rate of mileage in excess of ten cents a mile were no longer operative.

We are, therefore, of the opinion that Section 3111, being a later enactment than Section 3194, and also having been construed by the supreme court of this state as limiting the mileage of state, county and township officers to ten cents per mile, would govern, and therefore the county commissioners are only entitled to charge and receive ten cents per mile for the distance actually traveled in going to and returning from the county seat and his place of residence.

In this respect, this opinion modifies our opinion of July 20, 1910, addressed to Hon. B. F. Maiden, county attorney, Lincoln county, in which we held that county commissioners were entitled to receive fifteen cents per mile.

Yours very truly,

ALBERT J. GALEN,

Attorney General.