

County Health Officer, Is County Officer. County Physician, It Not County Officer. Mileage, Construction of.

A. county health officer is a county officer and must maintain an office at the county seat. A county physician is not a county officer, but must reside within the county. Officers are entitled to mileage for the distance actually traveled, which must be computed upon the shortest feasible route, weather conditions and conditions of the road at different times of the year being taken into consideration.

May 1st, 1913.

Hon. B. E. Berg,
County Attorney,
Columbus, Montana.

Dear Sir:

I beg to acknowledge receipt of your letter of April 14, 1913, inquiring as to whether Sec. 2967 of the Revised Codes, providing that all county officers must hold their offices at the county seat, embraces a county health officer and county physician. In answering this question it is necessary first to decide whether these officers can be classed as county officers, as the same are understood by the constitution and codes. Neither of them are mentioned as county officers as the same are enumerated in Sec. 2957 of the Revised Codes. Secs. 5 and 6 of Art. XVI of the Constitution of Montana provide for the election and appointment of the various officers of the counties, Sec. 6 of Art. XVI being as follows:

"The Legislative Assembly may provide for the election or appointment of such other county, township, precinct and municipal officers as public convenience may require, and their terms of office shall be as prescribed by law, not in any case to exceed two years, except as in this constitution otherwise provided."

It is doubtful whether the office of county physician, as he is ordinarily called, can be properly classed as a county officer, provision being made in Sec. 2056 that:

"The board must annually at their December meeting make a contract with some resident practicing physician to furnish medical attendance to the sick, poor and infirm of the county, and to inmates of the county jail, and must also make provision for the furnishing of medicine to the same."

From which it will be seen that the relation of the so-called county physician arises out of a contract and not out of appointment, and that he is given no executive power, and does not exercise any of the functions of government. But the county health officer, on the other hand, may be properly classed as a county officer, in as much as he has certain authority to investigate disease and exercise some of the sovereign power of the state. Furthermore, his office arises out of appointment from a board to which the Legislature has delegated the authority of appointing him. In construing a similar constitutional provision, the Supreme Court of New York in an early case, in the matter of Whiting, 2 Barber, 513, used this language:

"The county officers within the meaning of the constitution would comprehend all those who are appointed or elected for a county and must reside and perform the duties of their office within their counties."

It will be seen that two requirements are necessary to constitute one a county officer other than the one indicated above, to-wit: residence and duties co-extensive with the political subdivision for which he is appointed. I therefore conclude that the term "county officer" may be applied to the county health officer but not to a so-called county physician. As you say, Sec. 2967 of the Revised Codes requires:

"All county officers must keep their offices at the county seat,"

And that provision of the code authorizing a contract with a physician to furnish medical attendance to the sick, poor and infirm of the county and inmates of the county jail, requires that that contract be made with a resident practicing physician. However, "holding office" and "residing" are not necessarily synonymous terms, since a man might well have an office in several different localities in a given county and reside in but once place.

You are, therefore, advised that the law requires the county health officer to maintain an office at the county seat, but it puts no restriction upon his place of residence except (Sec. 420 of the Revised Codes) he must reside within the county for which he is appointed, and since the county physician is not properly a county officer, he would not come under the provisions of Sec. 2967, though he must of necessity reside within the county.

Regarding the mileage of officers, I will say that the statute provides for the distance actually traveled and that State ex rel. MacMillan v. Ramsey, 28 Pac. 258, cited by you, seems to indicate that the distance shall be computed by the nearest feasible route. For instance, many of the roads in this state are good in summer, and absolutely impassable in winter. It would hardly be fair to allow only the amount of mileage which would be due for travel over the shortest possible route, when it was in fact impossible to travel that route. It is, therefore, my opinion that officers are entitled to mileage for distance actually traveled and that it must be computed upon the shortest feasible route, weather conditions and

the conditions of the road at different times of the year being taken into consideration.

Very truly yours,

D. M. KELLY,
Attorney General.