

**County Commissioners—Per Diem of—Compensation of
—Mileage of.**

A County Commissioner is entitled to compensation for each day of actual attendance at the sessions of the board and ten cents a mile for each mile necessarily traveled in going to and coming from the county seat to his place of residence.

April 7, 1917.

Hon. T. F. Schofield,
Chairman Board of County Commissioners,
Baker, Montana.

Dear Sir:

I am in receipt of your letter of March 28th submitting the following question concerning mileage and per diem of county commissioners:

“Will you kindly grant me an official opinion as to a suitable per diem and expense chargeable to the county under these and similar conditions? Does the per diem apply from the time one leaves home until his return, or is it confined to the days in session?”

Section 2893 of the 1907 Revised Codes is as follows:

“Each member of the Board of county commissioners is entitled to eight dollars per day for each day's attendance on the session of the board, and ten cents per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence, and no other compensation must be allowed.”

Section 3194 of the 1907 Revised Codes is as follows:

“Members of the board of county commissioners each receive eight dollars per day and fifteen cents per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence.”

Section 3111 of the 1907 Revised Codes is as follows:

“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.”

In the case of *Wade v. Lewis & Clark County*, 24 Mont. 335; 61 Pac. 879, it was held that, so far as mileage is concerned, Section 3194 is superseded by Section 3111.

There is no provision whatever in our statutes for the payment of expenses of the members of the board of county commissioners while traveling to and from the county seat and their places of residence to attend meetings of the board of county commissioners, mileage being allowed them in lieu of expenses.

Section 2893 and also Section 3194 provide that each member of the board is entitled to per diem "for each day's attendance on the session of the board." I have been unable to find that this, or any similar provision with reference to county commissioners, has ever been construed. I do find, however, a number of decisions with reference to per diem of witnesses, in which language is used similar to that in these sections. Some statutes provide that witnesses shall be allowed mileage at a specified rate, and per diem "for each day's attendance while others provide that witnesses shall be allowed mileage at a specified rate, and per diem "for each day's attendance in court." In construing statutes containing these provisions I find that it uniformly held that witnesses are only allowed per diem for the days actually in attendance, and not for the time consumed in going to or returning from the place where the court is held and the places where the witnesses reside.

Pringle v. The Michigan, 52 Fed. 509;

Carter v. Sweet, 84 Fed. 16;

Venetian Blind Co. v. Nesbit, 13 Pa. Co. Ct. 332;

Miller v. Shoop, 1 Lanc. 377.

I am, therefore, of the opinion that, when attending sessions of the board of county commissioners, the members of the board may lawfully charge and collect mileage at the rate of ten cents per mile for each mile necessarily traveled in going to and returning from the county seat and their places of residence, but they cannot charge expenses of such travel in lieu of mileage; and they may also lawfully charge and collect per diem at the rate of eight dollars for each and every day actually in attendance at sessions of the board; that they cannot lawfully charge or collect per diem for the days consumed in traveling to or returning from such sessions.

Respectfully,

S. C. FORD,

Attorney General.