

Court Stenographer—Mileage in Accompanying District Judge From One District to Another.

A court stenographer, accompanying a judge of one judicial district into another judicial district for the purpose of taking testimony, is not entitled to per diem or mileage from any county of the latter district, unless the appointment of such stenographer became necessary because no stenographer was provided or available.

R. B. Hayes, Esq.,
County Attorney,
Miles City, Montana.

My dear Mr. Hayes:

You have requested my opinion as to the validity of a claim against the county arising out of the following facts:

“During the month of December, 1921, a District Judge from another judicial district presided in the District Court of the Sixteenth Judicial District held in Baker, Montana. This District Judge instructed his court reporter to accompany him from his home to Baker. The court reporter has now filed a claim for \$17.48 against Custer County, this being the Custer County’s apportionment for four days services at \$10 per day. The County Auditor has requested an opinion from this office as to the validity of this claim.”

Sections 6373 and 6374 of the Revised Codes of 1907, which provide for the appointment of stenographers and their duties, read as follows:

“6373. The judge of a district court may appoint a stenographer for such court, who is an officer of the court, and hold his office during the pleasure of the judge appointing him, and he must subscribe the constitutional oath of office, and file the same with the clerk of the court. In districts where there are two or more judges each judge may appoint a stenographer.

“6374. Each stenographer must, under the direction of the judge, attend all sittings of the court, take full stenographic notes of the testimony, and of all proceedings given or had thereat, except when the judge dispenses with his services in

a particular cause, or with respect to a portion of the proceedings therein. The stenographer must file with the clerk forthwith the original stenographic notes taken upon a trial or hearing required to be taken by this section."

Section 6378, as amended by Chapter 80 of the Laws of 1909, provides for the compensation of a court stenographer and for mileage while travelling from one county seat to another within the same judicial district.

It is clear that the judge or judges in each judicial district have the right to appoint stenographers for that district, and such appointees may do all of the reporting in that District Court. But when a District Judge of one district is called into another district to preside over the court of that district, he is called in to take the place of the local judge for the time, and the use of the room, chambers, attendants and ministerial officers of that court are his.

There is no provision in the law authorizing the payment of per diem or mileage to a court stenographer who goes with the judge of his district into another judicial district for the purpose of taking testimony in a case in the latter district or for any purpose.

The courts have the power under the statutes to provide facilities, including attendants, if they are not already provided but not otherwise. (*State ex rel. Hillis v. Sullivan*, 43 Mont. 320.) In this case the court had appointed a bailiff when a deputy sheriff was available to act as such. The Supreme Court, after reviewing its own and other decisions, concluded with this language:

"The relator at bar was appointed by the district court to render a service which by statute and by the common law it was the right and duty of the sheriff to render, or of the county to supply. He was appointed *ex gratia*, without recourse to the mode prescribed by law and without anything to indicate that such recourse would be unavailing. He has been kept, not out of the necessities of the court, so far as the record discloses, but in spite of the sheriff's offer to render all the attendance for which public moneys may be paid. His compensation has been fixed by the district judge without reference to legislation, and has been ordered paid out of funds for the expenditure of which the board of county commissioners is primarily responsible. To state the instant case is to state its necessary conclusion, viz., that the service of the respondent covered by his claim was without authoritative warrant. Therefore, his claim, though audited by the judge, is not a liquidated charge against the county, and therefore the appellant cannot be compelled to pay it."

I am, therefore, of the opinion that a court stenographer accompanying the judge of one judicial district into another judicial district for the purpose of taking testimony in a case in the latter district, is not

entitled to per diem or mileage from any county of the latter district, unless the appointment of such stenographer became necessary because no stenographer was provided and available under the above statutes.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.