

County Attorney—Mileage—Pass—Railroads.

An attorney may occupy the office of County Attorney and at the same time act as counsel for a railroad company so long as the legal interests of the county or state and the railroad company do not conflict.

A County Attorney is not entitled to mileage, but is allowed his actual expenses while traveling on public business. As he incurs no expense for transportation while traveling on a pass he is not entitled to charge the county for such transportation.

L. Q. Skelton, Esq.,
State Examiner,
Helena, Montana.

My dear Mr. Skelton:

You have requested my opinion on the following question:

“Has a County Attorney a legal right to accept a pass from a railroad company when it is shown that he is employed as counsel? If so, has he a legal right to use this pass to cover mileage when on business for the county, and charge the county for same?”

Section 6573, Revised Codes of 1921, specifies the persons to whom free transportation may be issued by railway companies in this state, which includes persons serving as attorneys for such railway companies.

Under Section 6575 certain free or reduced price transportation may be furnished to certain persons including executive, judicial or legislative officers of the State of Montana, upon application therefor by the Secretary of State, who must keep a record of all such transportation so applied for and received.

This same section also provides that persons traveling upon such free transportation "shall not be entitled to charge any mileage against the state, or if traveling upon a ticket sold at reduced fare, they shall not be entitled to charge mileage in excess of the cost of said ticket."

It will be observed that this section does not mention county officers, but applies only to state officers, and there is no provision in the statutes relative to free transportation other than the above sections. There are no restrictions in the statutes which prohibit a County Attorney from acting as counsel for a railroad company, as long as the legal interests of the county or state and the company do not conflict. It is, therefore, my opinion that there exists no legal objection to such person accepting a pass from the railroad company.

Your second question is whether a County Attorney is entitled to charge mileage against the county while using a pass which he is entitled to use.

This same question was answered by a former Attorney General (See Vol. 2, Opinions of Attorney General, 211) as to a Sheriff and, at the time it was rendered, there was no law in this state prohibiting a Sheriff from accepting free transportation from a railroad company. The following is quoted from the opinion:

"In all the cases where a Sheriff is entitled to mileage under Section 4604, as amended by Chapter 86, Laws 1905, he can collect same regardless of the fact that he may travel on free transportation, for it is an allowance in lieu of actual expenses, and it matters not how he travels, or what it costs him, he is entitled to ten cents, and no more, for each mile necessarily traveled.

"But in case of delivering persons to the State Penitentiary, State Reform School, and the State Insane Asylum, where a Sheriff, under Section 4604, as amended, is allowed only his 'actual expenses necessarily incurred' he should not be allowed anything for railroad fare for himself when traveling on a pass."

A County Attorney is not entitled to mileage, but is allowed his actual traveling expenses while traveling on public business. He would not, therefore, be entitled to mileage and, inasmuch as he incurs no expense for transportation while traveling on a pass, it is my opinion that he is not entitled to charge the county for such transportation.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.