

Fees—Mileage—Witnesses.

Witnesses coming from without the state to attend a criminal trial and testify therein are entitled to mileage only from the state line to the place of trial, both coming to and going from the place of trial, but are not entitled to expenses incurred without the state.

James L. Hillier, Esq.,
Chairman Board of County Commissioners,
Superior, Montana.

My dear Mr. Hillier:

You have submitted to this office the question as to whether a complaining witness in a criminal case who motored to California and returned to Superior for trial is entitled to expenses from California to the state line and mileage from the state line to Superior.

In the case of *Chilcott v. Rea*, 52 Mont. 134, 140, the Court had before it the question of allowing witness fees and mileage outside of the state in a civil case. The Court in that case said:

“Among the costs allowed to the plaintiff is an item of \$67.70 for mileage of a witness who came to Billings from Topeka, Kansas, to testify. The record shows that he came by way of Chicago, Burlington & Quincy Railway, which is the most direct route, and which leaves the state at a point 105 miles from Billings. The claim is that this mileage should have been reduced to \$21, without any allowance for ‘hotel bill, sleeper, expenses and railroad fare.’ We think this is correct. The only costs allowed the successful litigant on account of witnesses are their ‘legal fees, including mileage’

(Rev. Codes, Sec. 7169), and these are: For each day of attendance, \$3; for mileage in traveling to and from the place of trial, 10 cents per mile. (Rev. Codes, Sec. 3182.) While Section 3182 itself expresses no restrictions, and while the authorities are in conflict as to whether in civil actions mileage is allowable beyond the state line, we are nevertheless convinced that since recoverable costs are always limited to such as are necessarily incurred, and since the process of this state has no validity beyond its boundaries, and since ample provisions exist for taking the depositions of witnesses who reside without the state, the mileage allowable in civil actions as contemplated by the sections above referred to is mileage within the state. (11 Cyc. 120; 7 Ann. Cas. 164.)"

While there would seem to be more reason for allowing a witness mileage who attends a criminal trial from without the state than in a civil case, by reason of the fact that a deposition could not be used against the defendant, yet he is not obliged to attend where served without the state, and in my opinion would, therefore, be entitled only to mileage from the state line, going and coming.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.