

**Expenses—Traveling—Superintendent of Schools—Meals.**

The county superintendent of schools is entitled to expense for her meals in addition to the charge made for her automobile used in visiting schools.

J. H. Forster, Esq.,  
County Attorney,  
Malta, Montana.

May 8, 1929.

My dear Mr. Forster:

You have requested an opinion whether the county superintendent of schools of Phillips county can collect from the county the cost of her meals while traveling for the purpose of visiting schools in addition to mileage of twelve and one-half cents per mile.

Section 957 R.C.M. 1921 makes it mandatory upon the county superintendent of schools to visit the schools of the county.

Section 4948 R.C.M. 1921 provides as follows:

**“County superintendent’s traveling expenses.** Each county superintendent of schools shall be paid all necessary traveling expenses actually incurred in the discharge of his or her duties.”

This is a special act relating directly to the office of county superintendent of schools.

Section 4949 R.C.M. 1921 provides:

**“County commissioners to audit claims.** The boards of county commissioners of the several counties of the state are hereby authorized and directed to audit and allow such traveling expenses of the superintendent of schools of the respective counties, quarterly, and the same shall be paid out of the general fund of such county.”

Sections 4948 and 4949, supra, specifically refer to “traveling expenses” and make no mention of mileage as prescribed in the fees of certain other officers, particularly that of sheriff.

Section 4884 R.C.M. 1921, as amended by Section 1 of Chapter 80. Laws of 1923, provides:

**“Mileage of public officers when using private automobile.** Whenever it shall be necessary for any state or county officer to use his own automobile in the performance of any official duty where traveling expense is allowed by law, such officer shall receive not to exceed twelve and one-half cents per mile for each mile necessarily traveled unless otherwise specifically provided by law, and the members of any lawful approving board shall be liable upon their official bonds, for any claim which they may allow in excess of such amount; provided further, that in no case shall an automobile be used as herein provided if suitable transportation can be had by railroad.”

It apparently has been the intention of the legislature for many years to distinguish between "mileage" and "necessary traveling expenses." Certain officers were allowed mileage in lieu of other expenses, while others were allowed only necessary traveling expenses.

You make reference to Section 4885, which specifically provides for the mileage and expenses of sheriffs and of other officers performing the duties of sheriff. This act was enacted in 1905, long prior to the act relating to superintendents of schools.

House bill 110 of the 1929 Legislative Assembly amends the provisions of Section 4885 but again particularly refers to the office of sheriff.

Since these acts are each specific, I cannot see why the provisions of the sheriff's law should apply to that of county superintendents in the matter of expenses, as in the case of sheriff "mileage" is provided, while the term "traveling expense" is used in the case of county superintendents of schools.

Since the common use of the automobile the legislature has amended the provisions of the law relating to expense items and in certain cases where railroad transportation or other means of transportation is not feasible certain officers are permitted to use their own automobiles and an allowance for the use of the same not to exceed 12½ cents per mile is permissible. This item is not one of mileage but an amount fixed for transportation charges as a part of traveling expenses in lieu of railroad fare or other methods of transportation.

It is therefore my opinion that the county superintendent of schools is entitled to her meals in addition to the charge made for her car providing that said automobile charges come within the provisions of Section 4884 R.C.M. 1921, as amended by Chapter 80, Laws of 1923.

Very truly yours,

L. A. FOOT,  
Attorney General.

By C. P. Cotter, Special Assistant.