

a sheriff's auto mileage at twelve and one-half cents per mile. Therefore, prior to the Laws of 1933 the fees of a constable were fixed by the statutes which determined the mileage of a sheriff rather than by R. C. 4884 which fixed the salaries of "other officers." The specific controlled and not the general.

The laws of 1933, Chapter 121, amended Section 4916 and reduced the sheriff's mileage to eight and one-half cents. Chapter 16 thereof amended section 4884 and provided that all officers other than sheriff should receive seven cents per mile.

The question is, are constables entitled to mileage at the rate of seven cents per mile or eight and one-half cents per mile the same as sheriffs.

Section 4884, as amended, is a general statute and refers to officers generally. Section 4916, as amended, is a special statute and refers to sheriffs. Section 4932 is also a special statute which refers to constables. Repeals by implication are not favored. (*State v. Board of County Commissioners*, 89 Mont. 37 (76) and cases cited.)

The rule is generally adopted (subject to many exceptions) that a general statute will not repeal a special statute. The following excerpts from Sutherland, *Statutory Construction*, have been quoted with approval by the Montana Supreme Court: "Unless there is a plain indication of an intent that the general act shall repeal the special, the latter will continue to have effect and the general words with which it conflicts will be restrained and modified accordingly." (Sec. 158, quoted in *Equitable Life Insurance Co. v. Hart*, 55 Mont. 76, 87.) "It is always assumed that the legislature aims to promote convenience, to enact only what is reasonable and just. Therefore, when any suggested construction necessarily involves a flagrant departure from this aim, it will not be adopted if any other is possible by which such pernicious consequences can be avoided. \* \* \* In such a matter as the construction of a statute if the apparent logical construction of its language leads to results which it is impossible to believe that those who framed or those who passed the statute contemplated, and from which one's own judgment recoils, there is in my opinion good reason for believing that the construction which leads to

### Opinion No. 202

#### Constables—Mileage.

HELD: A constable is entitled to mileage at the rate of eight and one-half cents per mile, the same as sheriffs.

May 10, 1933.

You have inquired as to the mileage to be allowed to a constable.

In the Revised Codes of Montana, 1921, Section 4916 fixed sheriff's fees at ten cents per mile. Section 4884 fixed fees of others at ten cents per mile, and section 4932 provided: "Fees of constable. \* \* \* For mileage the same as sheriff and under the same conditions. \* \* \*." Therefore, at that time the fees of all officers were fixed at ten cents a mile.

Chapter 80, Laws of 1923, permitted officers using their own automobiles to collect twelve and one-half cents per mile. Section 4916 was amended by Chapter 89, Laws of 1929, to also fix

such results cannot be the true construction of the statute." (2 Lewis' Sutherland, 2d Ed. Sec. 487, quoted in State et al. v. Board of Comrs., 89 Mont. 37, 87.)

Applying this reasoning it must be concluded that the legislature intended that a constable was to receive exactly the same mileage for doing the same work as when it was done by a sheriff. Therefore a constable is entitled to mileage at the rate of eight and one-half cents per mile.