

**Opinion No. 562****Courts—Witnesses—Jurors—Mileage  
—Statutes, Construction of.**

**HELD:** Under Chapter 16, Laws of 1933, the mileage of witnesses and jurors should be computed at the rate of seven cents per mile.

That the title of an amendatory Act is, of itself, insufficient, is immaterial, if the title of the original act is sufficient to embrace the provisions contained in the amendatory act.

June 27, 1934.

You request my opinion regarding mileage of witnesses and jurors. When we examine Chapter 16, Laws of 1933, we find the language plain and definite that jurors and witnesses are to receive seven cents per mile. There can be no question whatever as to the intent of the legislature. This rule of seven cents per mile has been adopted by the office of the State Examiner and by the clerks and clerks of court of the various counties throughout the State. The objection urged to this Act is that it is unconstitutional and violates Section 23 of Article V of the Constitution in so far as it relates to the fees of witnesses and jurors, which subjects are not mentioned in the title of said Act.

Chapter 16, Laws of 1933, is an act which amends certain other Acts. Certain statutes are directly referred to as being amended, in particular Section 4884, R. C. M., 1921. Section 4884, R. C. M., 1921, both before and after its amendment, fixed the mileage of witnesses and jurors as well as officers. It is true that the fees of witnesses are also fixed in Sections 4936

and 4341, R. C. M., 1921, which are not expressly repealed by the Act in question. Many authorities may be cited to the effect that the title is insufficient.

There appears to be a somewhat different rule as to the sufficiency of the title of an amendatory Act. In *Cooley on Constitutional Limitations*, eighth edition, we find the following:

"In amending an act, it may be designated by its title or chapter in an authorized compilation of statutes." (Page 318.)

"That the title of an amendatory act is, of itself, insufficient, is immaterial, if the title of the original act is sufficient to embrace the provision contained in the amendatory act." (Page 319.)

The same rule is recognized in *Corpus Juris* as found in 59 C. J. 816, et seq.

In a number of decisions of the Supreme Court of this state a liberal rule has been adopted where the title of an amendatory Act is being construed. (*Hotchkiss v. Marion*, 12 Mont. 218; *State v. Long*, 21 Mont. 26; *State v. Anaconda Copper Mining Co.*, 23 Mont. 498; *State v. Courtney*, 27 Mont. 378; *State v. Silver Bow Refining Co.*, 78 Mont. 1.)

As the law is now interpreted it is saving the various subdivisions of the State many thousands of dollars. If any juror or witness desires to test the constitutionality of the law the courts are open for that purpose. The purpose of the Constitutional provision is that legislators may not be deceived as to the purpose and extent of proposed legislation. By reference to the statute to be amended and comparison of its very brief provisions with the provisions of the Act in question, a clear perception of the scope and intent of the proposed amendment is very easily ascertainable.

For the foregoing reasons the interpretation given this statute generally by the various county officers in the State should not be disturbed, and the mileage of witnesses and jurors should be computed at the rate of seven cents per mile.