

"When they use their cars in the performance of their duties and charge seven cents per mile, which I believe is the legal rate, should they also charge for storage of the car at night or at other times?"

"Is it legal to charge for meals and/or room when using their cars in the performance of their duties?"

"When there are two busses daily each way, between Hamilton and Missoula, each charging \$1.00 or less; the morning busses both arriving before 10:00 a. m., and the last one departing not later than 6:00 p. m., is it legal for them to use their cars and charge seven cents per mile for the 98 mile round trip? This means a cost of about \$6.86 plus lunch, in place of a cost of \$2.00 plus lunch if they used existing transportation."

Chapter 36, Laws of 1927, amending Section 8933, R. C. M. 1921, among other things, provides: "The stenographer is allowed, in addition to the salary and fees above provided, in judicial districts comprising more than one county, his actual and necessary expenses of transportation and living when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto, said expenses to be apportioned and payable in the same way as the salary."

It will be observed from the above section as amended that a court reporter is allowed his "actual and necessary expenses of transportation and living." The mode of transportation has nothing to do with the actual and necessary expenses of living. The mileage charge is made for the actual and necessary expenses of transportation and does not cover living expenses. Your second question, therefore, must be answered in the affirmative.

As to whether a storage charge is proper depends, in my opinion, upon the question whether it is a necessary expense of transportation. There may be times when it is necessary and other times when it is not, depending upon facts and circumstances. It would seem that an officer using his own car for transportation should be entitled to its protection without per-

Opinion No. 196.

Courts—Court Reporters—Living Expenses—Transportation—Mileage—Storage of Car—County Commissioners.

HELD: 1. The mileage charge is made for the actual and necessary expense of transportation; a Court Reporter is entitled to actual and necessary expenses of living even though he may also be entitled to mileage.

2. Whether a storage charge for automobile of a court reporter is a proper charge is a question of fact for the county commissioners.

3. The county commissioners must be the judge of the necessity, under the circumstances in each case, of the use of a private car for transportation.

November 4, 1935.

Mr. Harvey Thornber
County Commissioner
Hamilton, Montana

You have submitted the following questions relative to the expense accounts of court stenographers:

sonal loss. We do not believe that ordinarily county commissioners would be criticized for allowing a claim for storage where it appeared to them to be a necessary expense of transportation. We hold, therefore, that whether the storage of an automobile is a necessary expense of transportation is a question of fact for the county commissioners to determine.

Whether a court stenographer would be justified in using his own automobile instead of using the bus, I call attention to Section 3, Chapter 16, Laws of 1933, which provides: "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 seven cents (7 cents) per mile for each mile necessarily traveled * * *. Provided, further, that in no case shall an automobile be used as herein provided if suitable transportation can be had by railroad."

It will be observed that necessity is the only reason why the state or county should pay more than the regular railroad fare for the transportation of its officials. The county commissioners, of course, must be the judge of the necessity which, of course, depends upon the circumstances in each case. While the statute does not include busses which are used on the highways, we believe that public officials will be guided by the spirit of the law and where suitable bus transportation is available, they will not use their own automobiles unless it is actually necessary.