

Opinion No. 154.

Highway Patrols—Constables.

HELD: 1. Highway patrolmen have only the powers and duties as prescribed by Sections 7 and 8 of Chapter 182, Laws of 1937.

2. The Patrol Act did not repeal the statutory duties of constables, nor substitute the constables' duties for those of the patrolmen.

3. Constables in townships of more than 35,000 population receive a salary, statutory fees and mileage; in townships of not less than 12,000, nor more than 35,000, they receive salary and mileage, but no fee; and in townships less than 12,000, they receive statutory fees and mileage.

September 10, 1937.

Mr. L. C. Boedecker
Supervisor of the Highway Patrol
Helena, Montana

My dear Mr. Boedecker:

In response to inquiries by various township and county enforcement officials, in reference to the fees allowed to constables pertaining to highway violations, we submit the following opinion.

Section 4932 itemizes in minute detail the character of the service and the fee the constable is entitled to charge therefor. The last paragraph of said section provides that:

"Constables in townships having a population of twelve thousand (12,000) people and not exceeding twenty thousand (20,000) people, shall each receive a salary of \$900.00 per annum, payable monthly from the county treasury. Constables in townships having a population of more than twenty thousand (20,000) people shall each receive a salary of \$1,500.00 per

annum, payable monthly from the county treasury, and constables in such townships where the population is twelve thousand (12,000) people and not more than thirty-five thousand (35,000) people, shall receive no other fee for civil suits or criminal actions except mileage in the performance of their duties. Any such fees received by the constables shall be turned over to the county treasurer." (Underscoring ours.)

Constables in townships of less than 12,000 population receive mileage and fees; constables in townships of not less than 12,000, nor more than 35,000 population, receive salary and mileage; and constables in townships of more than 35,000 population receive salaries, fees, and mileage. The question is, when shall these fees be paid in a case involving a violator of the highway patrol laws. The obvious answer is, whenever a constable performs any of the duties as are required by law to be performed by him, and particularly required by Sections 12326, 10916, 4859, and 4861, unless the duties therein prescribed have been repealed or modified by any of the duties imposed by law upon the highway patrolman.

Section 8 of Chapter 182, 1937 Session Laws, provides:

"Patrolmen, upon making an arrest, shall either deliver the offender to the nearest justice of the peace during office hours, or to the county jail, or, in lieu thereof, deliver to the offender a form of summons describing the nature of the offense, with instructions thereon for the offender to report to the nearest justice of the peace, or in lieu of reporting to the nearest justice of the peace, the patrolman has the right to set and accept a deposit for appearance justifiable for the offense charged."

The above section has prescribed the duties to be performed by a patrolman making an arrest of an offender of the highway patrol laws. If the highway patrol officer has obeyed the mandate of Section 8, supra, he has performed his duties and is not required, and is without jurisdiction to perform other and additional duties not demanded of him by Chapter 182, or the general laws of the State of Montana. If other services are necessary, and it would

appear that they are in most instances, then the duty devolves upon the constable or the sheriff as the case may be. If the constable performs any of said services, if the township has a population of less than 12,000 or more than 35,000, he shall be paid such fees as are provided for in Section 4932. In townships of a population between 12,000 and 35,000, said constable shall receive no fee; however, in all cases in which his services are required, and which he performs, he shall receive mileage therefor.

The Patrol Act did not repeal the Statutory duty of constables, nor did it substitute the duties of a patrolman for those of the constable, except as is provided for in Section 8 of Chapter 182, *supra*.

Section 5, of Chapter 182, provides: "For the purpose of this act, the following acts committed relative to the use of the highways and the operation of motor vehicles in the State of Montana **outside of incorporated towns and cities shall constitute a crime * * ***"

Under Section 5 some twenty-two separate offenses are enumerated, such as driving a vehicle while under the influence of intoxicating liquor, etc.

Section 7 provides that in addition to said duties as enumerated in Section 5 of said act, the patrolmen are authorized to make arrests for felonies, etc.

Section 7 of said act does permit patrolmen to assume jurisdiction of traffic within an incorporated city, and to control traffic for sporting events, or other civic activities, for such length of time as is deemed necessary by the city officials. It is only in the offenses specified in Sections 5 and 7 of said act that patrolmen are to be deemed police officers. In all other offenses other than those specified, *supra*, said patrolmen have no official authority. Consequently, it follows that if there are certain other required duties to be performed by a patrolman, such duties would devolve upon said constable or sheriff as the case may be.

Supposing that the patrolman had performed all the duties imposed upon him by Section 8, *supra*, and, assuming that he had delivered to the offender a summons as required therein, or had taken a bond from the offender, and, notwithstanding, the offender went to his home within the city and failed to

appear in the office of the justice of the peace at the time required, and the justice of the peace issued a warrant for his arrest, it would certainly be mandatory upon the constable to serve said warrant. There are many other duties easily perceivable wherein the constable's services are required. He may be required to attend the trial of the case and serve the commitment, and execute the judgment of the court.

Therefore, it is my opinion that the constable in townships of more than 35,000 shall receive a salary, fee, and mileage; that in townships of not less than 12,000 and not more than 35,000 he shall receive a salary (no fee), and mileage. In townships of less than 12,000 constables shall receive fees and mileage and the rate of such fees, where received, shall be as specified in Section 4932.