

**Opinion No. 276.****Offices and Officers—Mileage—Transportation, Modes of.**

HELD: 1. State and County officials may travel by bus or train while on official business. The term "railroad" as used in the statutes with reference to transportation, includes, "bus."

2. Officials must travel by bus or train when suitable, but when such means of travel is not suitable, they may use own automobile and charge the statutory mileage.

3. If an official uses his own automobile, when rail or bus transportation is suitable, he is not entitled to mileage, but may only charge the regular bus or rail fare.

4. In determining whether the mode of travel is suitable, the facts of each case, with respect to nature and object of errand, convenience to the work at hand, etc., must be considered.

5. No arbitrary rule can be established equally applicable to every case.

May 6, 1938.

Hon. W. A. Brown  
State Examiner  
The Capitol

Dear Mr. Brown:

You have submitted the following inquiry for my opinion:

"Section 4884.1 of the Revised Codes of Montana of 1935 provided that where suitable service is available, all county and state officers shall travel by railroad. During the last few years bus travel has increased to a very great extent, and we would like your opinion as to whether the words, 'by railroad,' as used in the above law, would also include similar travel when made by bus."

Section 4884.1, R. C. M. 1935, 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¢) 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."

The above section of the statute was enacted in the year 1923. Prior to its enactment, no distinction was made in the amount of mileage allowable to an official who operated his own automobile or who traveled by train or bus. In either event he received 12½ cents per mile for distance actually traveled. Chapter 16 of the 1933 Session Laws changed the rate from 12½ cents per mile to an amount not to exceed seven cents per mile for each mile necessarily traveled. If the official, prior to the 1923 amendment, traveled by train he

received 12½ cents per mile and by reason of the fact that the fare was less than 12½ cents per mile, he made a profit. The amendment eliminated such profit. In order to travel at the minimum standard expense the official was required to travel by train whenever and wherever possible, and was not allowed to travel by his own automobile.

The object of the amendment was to secure, for the benefit of the county, state or other governmental division, the lowest and most economical transportation, and the law was not intended to discriminate in favor of a railroad carrier as against a bus carrier. When the word "railroad" is used in Section 4884.1, it includes not only railroad but bus. Where it is possible to use either railroad or bus transportation an official is entitled to collect mileage upon the basis of the fare so charged, and is prohibited from charging seven cents per mile even though he has traveled in his own automobile. He is allowed not to exceed seven cents per mile where it is necessary that he use his own automobile by reason of the fact that railroad or bus service is not suitable.

In the event railroad or bus service is not suitable the official may travel in his own automobile, or otherwise, and he is entitled to the statutory allowance for mileage. Whether or not railroad or bus service is suitable is a question of fact, to be determined in each particular case, taking into consideration the nature and object of the official's errand, the convenience resulting to his office work and other duties. The train or bus mode of conveyance is not exclusive if the exigencies existing make such mode of travel unsuitable. No arbitrary rule can be established equally applicable to every case. The suitability of the mode of travel must be determined upon the particular facts existing in each separate instance.