

Opinion No. 311.**Officers—Counties—County Agent—
County Officers—Mileage.**

HELD: 1. A County Agent is not a county officer.

2. A County Agent is entitled to collect mileage at the rate of ten cents per mile.

3. Section 4884, R. C. M. 1935, as it applies to "other persons who may be entitled to mileage," is unconstitutional.

August 2, 1938.

Mr. Harold G. Dean
County Attorney
Thompson Falls, Montana

My Dear Mr. Dean:

The county commissioners of Sanders County have fixed the mileage of the county agent at five cents (5¢) per mile. You have asked whether such action is a violation of Section 4884, Revised Codes of Montana, 1935.

Section 4884 provides:

"Mileage of all officers. Members of the legislative assembly, state offi-

cers, county officers, township officers, jurors, witnesses, and all other persons, except sheriffs, who may be entitled to mileage shall be entitled to collect mileage at a rate of not to exceed seven cents (7¢) per mile for the distance actually traveled, and no more."

First it must be determined whether a county agent is a county officer.

"A county officer is a public officer who fills the position usually provided for in the organization of counties in county government and is selected by the county to represent it continuously and as a part of the regular and permanent administration of public power in carrying out certain acts with the performance of which he is charged in behalf of the public." (*Coulter v. Poole*, Calif. 201 Pac. 120.)

Another definition is given in 1 Words and Phrases 2d Series, 1100:

"An officer of the county is one by whom the county performs its usual political functions, its functions of government."

In my opinion the term "county officer" refers to the constitutional county officer whose duties are co-extensive with the county and who performs the political functions of government. Tested by such measure, the county agent is not a county officer. (See *State v. Miller* (Neb.), 178 N. W., 846; *Cliner v. State* (Ark.), 41 S. W. 2d, 768.) But though a county agent is not a county officer, he is required to travel from place to place in the county in the course of his duties. He is certainly entitled to be recompensed for his expenditures incurred in this way. Therefore, a county agent would be included in the clause "all other persons, except sheriffs, who may be entitled to mileage."

Having determined that a county agent is not a county officer, but is entitled to mileage, it only remains to ascertain the rate per mile. Section 4884, supra, sets the rate at seven cents (7¢), but in the case of *Coolidge v. Meagher*, 100 Mont. 172, the Montana Supreme Court had occasion to examine Section 4884, supra, and analyzed that section as follows:

"Chapter 16, Laws of 1933, Section 1, is purported to amend Section 4884, Revised Codes of 1921, which fixed the mileage of all state, county, and township officers, 'jurors, witnesses, and other persons who may be entitled to mileage' at ten cents; the amendment merely reduced the mileage to seven cents; otherwise the old law was copied into the new. The title to the chapter, however, in so far as material here, declares it to be 'An Act to Amend Section 4884 of the Revised Codes of Montana, 1921, Relating to Mileage of All Officers.' Had the title merely given the section it was intended to amend, it would, perhaps, have been sufficient to withstand the charge that it violated the constitutional provision (Sec. 23, Art. V) that the subject of every Act shall be clearly expressed in the title. (*Dowty v. Pittwood*, 23 Mont. 113, 57 Pac. 727; *State v. Courtney*, 27 Mont. 378, 71 Pac. 308.) However, as the title advised the members of the legislature and the public only that the Act related to the mileage of officers, whereas the section to be amended and the body of the amended Act deal with the mileage of persons other than 'officers,' it is misleading and violative of the constitutional provision cited; it did not clearly express the subject of the Act; from it alone a reader would gather that the amendment would relate only to mileage of officers. This misunderstanding would be strengthened by knowledge of the fact that the mileage of witnesses is fixed by Section 4936, Revised Codes of 1921, which is not mentioned in the title to Chapter 16, Laws 1933.

"The amendment is invalid in so far as it attempted to reduce the mileage of witnesses, as its title did not direct the attention truly to the purpose of the Act to deal with this subject. (*State v. Brown*, 29 Mont. 179, 74 Pac. 366; *State ex rel. Holiday v. O'Leary*, 43 Mont. 157, 115 Pac. 204; *Kelly v. City of Butte*, 44 Mont. 115, 119 Pac. 171.)"

Under authority of that case I am bound to hold that the amendment to Section 4884, Revised Codes of Montana, 1921, by Chapter 16, Laws of 1933, as it applies to mileage for "other persons who may be entitled to mileage," is unconstitutional. Therefore,

such persons are entitled to mileage at the rate of ten cents (10¢) per mile.

The court points out that in 1935 the legislature amended Section 4936, Revised Codes of Montana, 1921, to allow but seven cents (7¢) per mile. Such amendment, of course, cured the defect in Section 4884 as to witnesses, but no such curative statute has been passed as to "other persons entitled to mileage." Therefore, such persons, in this instance the county agent, are entitled to collect at the rate of ten cents (10¢) per mile.