

age in travelling to and from sessions of board meetings each day thereof?

"2. What mileage should be allowed members of the board of county commissioners in travelling to and from sessions of board meetings?"

Originally, the above questions were controlled by Section 347, L. 1879. Section 347 allowed mileage at the rate of 10¢ per mile. Section 756, L. 1887, amended Section 347 by increasing the mileage to 20¢ per mile. Section 4222, R. C. M. 1935, amended Section 755, supra, by fixing the mileage at 10¢ per mile and the law has remained the same ever since. When the mileage rate was first established, comparatively few counties existed, and in many instances county commissioners were compelled to travel longer distances than now. Travel was had either by train or horse, and it was impossible for a county commissioner who lived a great distance from the county seat to return to his home each day. As originally enacted, under the conditions then existing, the law did not contemplate that the board members would return to their homes except at the end of the session. The original concept of the law has not been changed.

We are in accord with former Attorney Generals' opinions holding that board members are entitled to mileage for one trip only to a session of the board of county commissioners.

**Opinion No. 315.**

**Counties—County Commissioners—  
Mileage.**

HELD: County commissioners are entitled to mileage for one trip only, for each session of the board of county commissioners. (The rate is 10¢ per mile. See opinion of the Attorney General, No. 306, Vol. 17.)

August 3, 1938.

Hon. W. A. Brown  
State Examiner  
The Capitol

Dear Mr. Brown:

You have submitted to this office, for my opinion, the following questions:

"1. May the members of the board of county commissioners charge mile-

Vol. 5, Opinions of the Attorney General, p. 592;

Vol. 8, Opinions of the Attorney General, p. 43;

Vol. 8, Opinions of the Attorney General, p. 48.

The opinion found in Volume 11, Opinions of the Attorney General, p. 261, is not in conflict with these early opinions. Since the rendition of said opinions the legislature has not seen fit to further act upon the matter. The failure of the legislature to act, while not controlling, is persuasive as to the correct conclusion of these earlier opinions, particularly when they have been acted upon and followed for such a lengthy period of time.

It will be noted that the county commissioners are entitled to 10¢ per mile for mileage for distance necessarily travelled to and from attendance at

Board meetings (4464), and 7¢ per mile while inspecting roads and performing similar duties (4884). While attending board meetings the members receive no other compensation than their mileage and per diem. While inspecting roads and performing similar duties (1632), in addition to the per diem and mileage, necessary expenses are allowed. In other words, the extra mileage received by the members of the board of county commissioners while attending sessions will compensate them, to some extent at least, for necessary living expenses occasioned while remaining at the county seat during the session.

Your other question has been passed upon by our Opinion No. 306, Volume 17, Opinions of the Attorney General. Therefore, it is my opinion that a member of the board of county commissioners is entitled to mileage for one trip only in attending a session of the board. (Opinion No. 306, Vol. 17, Opinions of the Attorney General, interprets the law as allowing 10¢ per mile.)