

No. 125

**MILEAGE—OFFICERS—COUNTY CORONERS—
PROBATION OFFICERS**

- Held:** 1. Coroners should be allowed seven cents for each mile actually traveled in the performance of any duty.
2. Probation officers should be allowed their actual and reasonable traveling expenses not to exceed five cents per mile.

May 26, 1941.

Mr. Frank J. Roe
County Attorney
Silver Bow County
Butte, Montana

Dear Mr. Roe:

Section 4884 of the Revised Codes of Montana, 1935, as amended by Chapter 121, Laws of 1941, provides:

"Section 4884. **Mileage of All Officers.** Members of the legislative assembly, state officers, county officers, township officers, jurors, witnesses, county agents 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 five cents (5c) per mile for the distance actually traveled, and no more."

You ask whether the mileage limitation contained in this section is applicable in the cases of county coroners and probation officers.

Section 4922 of the Revised Codes of Montana, 1935, as amended by Chapter 9, Laws of 1937, is a special statute dealing specifically with the mileage to be allowed coroners and allows seven cents "for each mile actually traveled in the performance of any duty."

Ordinarily a general statute, without express words of repeal, does not repeal a previous special statute.

Equitable Life Insurance Society of the U. S. v. Hart, 55 Mont. 76, 173 Pac. 1062;

State ex rel. Charette v. District Court, 107 Mont. 489, 86 Pac. (2nd) 750;

19 Opinions of the Attorney General No. 61;

15 Opinions of the Attorney General No. 202.

Taking into consideration also the reticence of courts to interpret repeal by implication, it is apparent the mileage of coroners was not reduced by Chapter 121, Laws of 1941.

A different situation is presented in the case of probation officers appointed by virtue of Section 12288, as amended by Chapter 101, Laws of 1939.

The pertinent portions of that section relating to mileage for probation officers allows "the actual and reasonable traveling . . . expense."

The fact probation officers are clothed, in certain instances, with the powers and authorities of sheriffs can not, in the absence of express language in the statute, authorize the payment of mileage allowed sheriffs.

Section 12288, as amended, insofar as it relates to traveling expense, and Section 4884, as amended, are not inconsistent, should be construed together, and effect should be given to both.

State ex rel. Riley v. District Court, 103 Mont. 576, 64 Pac. (2nd) 115;

Under such statutory construction, the mileage allowed probation officers should be the actual and reasonable traveling expense, not to exceed five cents per mile.

Sincerely yours,

JOHN W. BONNER
Attorney General