

No. 350

**OFFICERS—MILEAGE—INSANITY HEARINGS, mileage
of physicians attending—PHYSICIANS**

Held: The provisions of Section 1 of Chapter 121 of the Laws of 1941 do not govern the mileage to be paid a physician attending an insanity hearing and, accordingly, such physician is entitled to 10¢ per mile for each mile traveled, as provided in Section 1441 of the Revised Codes of Montana, as amended by Section 7 of Chapter 117 of the Laws of 1939.

January 29, 1942.

Mr. Edison W. Kent
County Attorney
Granite County
Philipsburg, Montana

Dear Mr. Kent:

You have asked the opinion of this office whether a physician attending an insanity hearing is entitled to ten cents per mile for traveling expenses, as provided in Section 1441, Revised Codes of Montana, 1935, as amended by Section 7, Chapter 117, Laws of 1939, or whether the mileage for such physician is governed by Section 4884 of the Revised Codes of Montana, 1935, as amended by Section 1, Chapter 121, Laws of 1941, which provides for mileage at five cents per mile.

It should be noticed the title to the bill that became Chapter 121 of the Laws of 1941, after referring to the Sections of the Code to be amended, further identified the subject matter within the bill by the following words:

“Relating to Mileage for Members of the Legislative Assembly, State Officers, County Officers, Township Officers, Jurors, Witnesses, County Agents, Sheriffs, and All Other Persons.”

In the case of Equitable Life Assurance Co., et al., v. Hart, et al., 55 Mont. 76, 87, 173 Pac. 1062, the following rule of statutory construction has been laid down.

“Unless there is a plain indication of an intent that the general act shall repeal the special, the latter will continue to have effect and the general words with which it conflicts will be restrained and modified accordingly.”

Section 4884, Revised Codes of Montana, 1935, as amended, is a general law purporting to relate to all mileage. Section 1441, as amended, relates only to mileage of physicians attending an insanity hearing and is

a special law. The question is, therefore: What was the legislative intent with respect to Section 1441, as amended, when Chapter 121 of the Laws of 1941, amending Section 4884, was enacted? In this regard this office has already held said amendment of Section 4884 would not affect a special statute relating to the mileage for county coroners. (Vol. 19, Report and Official Opinions of the Attorney General, No. 125). It has also held, with respect to a previous amendment to Section 4884, the general statute did not affect a special statute relating to mileage of constables. (Vol. 15, Report and Official Opinions of the Attorney General, No. 202).

In view of the prior holdings of this office with respect to the intent of the legislature as to the effect that the amendment of the general statute, Section 4884, would have on special statutes similar to Section 1441 of the Revised Codes of Montana, 1935, relating to mileage for physicians attending insanity hearings, I must conclude the effect of the amendment of Section 4884 was to fix the mileage of only those officers or persons who are not affected by some special statute.

It is my opinion the provisions of Section 1 of Chapter 121, Laws of 1941, do not govern the mileage to be paid a physician attending an insanity hearing and, accordingly, such physician is entitled to (10¢) ten cents per mile for each mile traveled, as provided in Section 1441 of the Revised Codes of Montana, 1935, as amended by Section 7 of Chapter 117, Laws of 1939.

Sincerely yours,

JOHN W. BONNER
Attorney General