

No. 61

COUNTY TREASURERS—CONSTABLES—MILEAGE

- Held:** 1. County Treasurer, while seizing and selling personal property for taxes, is entitled to mileage at the rate of seven cents per mile.
2. Constable is entitled to the same mileage as sheriff and may collect seven cents per mile.

March 26, 1941.

Mr. W. A. Brown
State Examiner
State Capitol
Helena, Montana

Dear Mr. Brown:

You have requested my opinion as to the following questions which have arisen under Chapter 121 of the Laws of 1941:

- “(1) What is the mileage to be allowed the County Treasurer in connection with the seizure and sale of personal property for taxes?
“(2) What is the mileage to be allowed Constables?”

Section 1 of Chapter 121 of the Laws of 1941 amends Section 4884 of the Revised Codes of Montana, 1935, to read as follows:

“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 (5¢)** per mile for the distance actually traveled, and no more.”

Sections 3 and 4 of the Act reduce the sheriff's mileage to seven cents per mile. Section 5 consists of a general repealing clause.

Section 2243 of the Revised Codes of Montana, 1935, provides:

“2243. **Treasurer's Charges and Mileage for Sale or Seizure.** For seizing or selling personal property, the Treasurer may charge in each case the sum of three dollars, for the use of the county, and the same mileage as is allowed by law to the Sheriff of the county, and reasonable expenses for seizing, handling, keeping, or caring for any property so seized or sold.”

Section 4932, fixing the fees of constables, allows:

“For mileage, the same as sheriff and under the same conditions.”

Section 4884, as amended, deals with officers generally and is a general statute, while Sections 2243 and 4932 are special statutes covering mileage allowed county treasurers in certain proceedings and mileage allowed constables.

Chapter 121 does not expressly repeal these special statutes and ordinarily, in such cases, a general statute will not repeal a previous special statute.

Equitable Life Assur. Co., et al., vs. Hart, 55 Mont. 76, 173 Pac. 1062;

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

The repealing clause (Section 5) of Chapter 121 is not an express repeal of the prior special statutes.

State ex rel. Charette, supra.

Applying the foregoing rules of interpretation, since there appears no indication of an intent the general Act shall repeal the special Acts, the

latter will continue to have effect and the general words with which they conflict will be modified accordingly (Vol. 15, Report and Official Opinions of the Attorney General, page 141.)

It is therefore the ruling of this office that the County Treasurer may collect mileage, under Section 2243 of the Revised Codes of Montana, 1935, at the rate of seven cents per mile and constables are entitled to mileage at the rate of seven cents per mile, the same rate allowed sheriffs.

Sincerely yours,

JOHN W. BONNER
Attorney General