

Opinion No. 138.**Live Stock Commission, Expenses of
Members of—Mileage, Members of the
Live Stock Commission.**

Held: The expenses of members of the Live Stock Commission do not come within the provisions of Section 459.1, Revised Codes of Montana, 1935, as amended by Chapter 92, Laws of 1941, and Chapter 139, Laws of 1943, but are allowed their actual expenses as provided in Section 3254, Revised Codes of Montana, 1935. The mileage allowed the members in traveling to and from the meeting is paid under the provisions of Section 4884, Revised Codes of Montana, 1935, as amended by Chapter 121, Laws of 1941.

October 6, 1943.

Mr. Paul Raftery
Secretary
Live Stock Commission
State Capitol
Helena, Montana

Dr. Mr. Raftery:

You have requested my opinion concerning the expenses of members of the Live Stock Commission when attending a meeting of the commission. You have asked whether the expenses of the members are governed by the provisions of Section 459.1, Revised Codes of Montana, 1935, as amended by Chapter 92, Laws of 1941, as amended by Chapter 139, Laws of 1943.

You call my attention to the provisions of Section 3254, Revised Codes of Montana, 1935, as pertinent to the question here in issue.

"The members of the livestock commission shall receive **no compensation for their services, but shall be allowed their actual expenses for and while attending meetings**, such expenses to be audited, allowed, and paid as in the case of other expenditures of the said commission." (Emphasis mine.)

Section 459.1, as amended by Chapter 92, Laws of 1941 and Chapter 139, Laws of 1943, provides as follows:

"Every person engaged in any service in every department of state, inclusive of persons in appointive positions or positions created by law, whose duties consist of full or partial time in traveling to perform any service for the state under monthly or yearly salary, or who may be sent by any authorized executive of any department of the state upon a mission in performance of any clerical work, investigating, reporting, examining, educational service, demonstration work, supervisory or extension work or otherwise of every kind and character, shall make an itemized statement tersely stating in what capacity engaged each day while away from the department in which said daily duties may arise and the expense incurred daily and shall render to the board of examiners the said itemized statement, and at the end of each month, or if sooner required by said board, the said person so engaged shall render a total or recapitulation account thereof in a form to be prescribed by said board; provided, that in all cases such expenses other than railroad fare, bus fare, or automobile

hire shall be limited to not more than five dollars (\$5.00) per day; provided, however, that such persons while engaged on official business outside the State of Montana, shall be allowed such actual expenses as in the judgment of the board of examiners are reasonable, in an amount not to exceed seven dollars (\$7.00) per day." (Emphasis mine.)

It will be noted that Section 3254 relates specifically to the expenses of the members and will control unless Section 459.1, as amended, has application.

It will be noted that Section 459.1, as amended, applies to persons "engaged in any service in every department of state" who travel for the state or are sent upon a mission for the state and who are "away from the department in which said daily duties may arise." In other words, the legislature by the use of the last quoted phrase limited the application of Section 459.1, as amended, to persons who are regular employees of the state and elected officials of the state and their deputies and assistants and not to members of boards who do not receive per diem or regular compensation from the state, attention being directed to the clause "under monthly or yearly salary" appearing in the section.

The mileage of the members of the commission is to be computed and paid under the provisions of Section 4884, Revised Codes of Montana, 1935, as amended by Chapter 121, Laws of 1941, but all other expenses come within the provisions of Section 3254, Revised Codes of Montana, 1935.

It is my opinion therefore, that the expenses of members of the Live Stock Commission do not come within the provisions of Section 459.1, Revised Codes of Montana, 1935, as amended by Chapter 92, Laws of 1941, as amended by Chapter 139, Laws of 1943, but are allowed their actual expenses as provided in Section 3254, Revised Codes of Montana, 1935. The mileage allowed the members in traveling to and from the meeting is paid under the provisions of Section 4884, Revised Codes of Montana, 1935, as amended by Chapter 121, Laws of 1941.

Sincerely yours,
R. V. BOTTOMLY
Attorney General