

Opinion No. 261.

County Treasurer—Mileage—Rate of
Mileage—Taxes—Personal
Property Taxes.

Held: The county treasurer is entitled to seven cents per mile mileage in connection with his duties under Chapter 200, Political Code, Revised Codes of Montana, 1935, but in any other instance wherein he is entitled to mileage in the performance of his official duty he is entitled to only five cents per mile mileage unless there be special provisions in the statutes providing for a higher or lower rate of mileage.

December 2, 1944.

Mr. Thomas Dignan
County Attorney
Valley County
Glasgow, Montana

Dear Mr. Dignan:

You have requested an opinion in regard to the mileage allowed a county treasurer in posting tax notices and for handling tax sales.

Section 2 of Chapter 121, Laws of 1941, provides in part as follows:

"Whenever it shall be necessary for any state or county officer to use his own automobile in the performance of any official duty where traveling expenses are allowed by law, such officer except sheriffs shall receive not to exceed five cents (5c) per mile for each mile necessarily traveled unless otherwise specifically provided by law . . ."

Section 3 of said Chapter 121, provides in part as follows:

". . . While in the discharge of his duties, both civil and criminal, except as hereinbefore provided, the sheriff shall receive seven cents (7c) per mile for each and every mile actually and necessarily traveled . . ."

In effecting a sale of personal property under the provisions of Chapter 200, Political Code, Revised Codes of Montana, 1935, it is provided therein in Section 2243, for the mileage of the treasurer as follows:

"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 sheriff of the county, and reasonable expense for seizing, handling, keeping, or caring for any property so seized or sold."

In view of the above quotations from the mentioned statutes, it is clear that when the treasurer is collecting taxes under the provisions of Chapter 200, he has a right to seven cents per mile. Section 2 of Chapter 121 only applies where no specific mileage is allowed and of course Section 2243 specifically provides that the treasurer in such instances shall get the same as the sheriff and the sheriff's mileage is set by Section 3 of said Chapter 121.

In other instances where the treasurer may have a right to charge mileage in the performance of his official duties, he would be governed by Section 2 of Chapter 121, and would be authorized to charge only five cents per mile unless the specific statute under which he was authorized to charge mileage specified in a greater or lesser sum. Said Chapter 121 has heretofore been held by this office to be a general statute and does not apply where a special statute provides the exact amount of mileage for any specific officer or special work. (See in this respect Opinion No. 352, Volume 19, Report and Official Opinions of the Attorney General.)

Therefore, it is my opinion the county treasurer is entitled to seven cents per mile mileage in connection with his duties under Chapter 200, Political Code, Revised Codes of Montana, 1935, but in any other instance wherein he is entitled to mileage in the performance of his official duty, he is entitled to five cents per mile mileage unless there be special provisions in the statute providing for such mileage setting a higher or lower rate of mileage.

Sincerely yours,
R. V. BOTTOMLY
Attorney General