

Opinion No. 106

**Witnesses, Out of State—Mileage,
Maximum Amount For**

Held: The maximum amount for mileage, which may be tendered a witness in a criminal case for attendance from another state in a trial in this state, is the sum of ten cents per mile as provided in Section 3 Chapter 188, Laws of 1937.

March 25, 1948

Mr. W. G. Gilbert, Jr.
County Attorney
Beaverhead County
Dillon, Montana

Dear Mr. Gilbert:

You have requested my opinion concerning the amount for mileage that may be tendered to a witness summoned from another state to testify in this state in a criminal case under the provisions of Section 3, Chapter 188, Laws of 1937.

In your letter you advised me that the witness you wish to summon resides in Idaho and that under the Idaho act provision is made for the payment of 15 cents per mile and the witness would not have to come to Montana unless he were paid such amount.

This office, in Volume 10, Page 210, Report and Official Opinions of the Attorney General, held that witnesses coming from outside the state to attend a criminal trial are entitled to mileage only from the state line to the place of trial. This situation was corrected by Chapter 188, Laws of 1937, which provides for the attendance of witnesses in criminal cases both from this state to another state and also in Montana from states which by their laws have provided for attendance in this state. The compensation for the latter witnesses is fixed by Section 3 of Chapter 188, which provides, in part:

"If the witness is summoned to attend and testify in this State, he shall be tendered the sum of ten (10c) a mile for each mile and five dollars \$(5.00) for each day that he is required to travel and attend as a witness."

This portion of Chapter 188 must be considered a limitation on the amount that may be paid for mileage and per diem. In 70 C. J. 67, the text states:

"Witnesses are entitled to compensation only under statutes providing therefore. They are not entitled thereto at common law, or in cases for which the statute does not provide."

It is thus apparent that the authority for the payment of mileage must be found in the statute, in this case Section 3 of Chapter 188, Laws of 1937, and the amount designed constitutes a limitation.

It is, therefore, my opinion that the maximum amount for mileage, which may be tendered a witness in a criminal case for attendance from another state in a trial in this state, is the sum of ten cents per mile as provided in Section 3, Chapter 188, Laws of 1937.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General