

Opinion No. 11

**COURTS; Judges; expenses; mileage—COURTS; Judges; expenses;
travel—DISTRICT COURTS; Judges; travel expenses—OFFICES
AND OFFICERS; District Judges; travel expenses—OFFICES
AND OFFICERS; Expenses; mileage; district judges—
Sections 59-801, 59-802, 93-305 and 93-313, Revised
Codes of Montana, 1947**

Held: District Court Judges are entitled to actual travel expenses permitted by Sections 93-305 and 93-313. The mileage allowance of 7c per mile provided by Sections 59-801 and 59-802 is not applicable to District Court Judges.

April 16, 1959

Honorable Philip C. Duncan
Fifth Judicial District
Dillon, Montana

Dear Judge Duncan:

You have requested my opinion whether district court judges are authorized actual travel expenses under Sections 93-305 and 93-313, RCM, 1947, or are limited to 7c per mile as prescribed by Sections 59-801 and 59-802, RCM, 1947, when using their private automobiles in transacting judicial business.

Section 59-801 was enacted as Section 4590, Pol. C. 1895 and provided in part: "That members of the legislative assembly, state officers . . . shall be entitled to collect mileage at the rate of ten cents per mile for the distance actually travelled . . ." This section was amended by Chapter 16, L. 1933, Chapter 121, L. 1941, Chapter 201, L. 1947, Chapter 93, L. 1949 and Chapter 124, L. 1951. All of the amendments pertained to the allowance per mile and did not include or exclude persons from the allowance as originally enacted.

Section 93-305 was enacted as Chapter 3, L. 1907, and authorized actual expenses, i.e. travel, board and lodging for district court judges while sitting in place of another judge in a district other than their own.

Section 93-313 was enacted as Chapter 91, L. 1911 and authorized actual and necessary transportation and living expenses for district court judges when holding court in their district in a county other than their residence.

Sections 93-305 and 93-313 were both enacted subsequent to the general provisions of Section 59-801. The latter section is a general statute and the two former statutes are special. In *Reagan v. Boyd*, 59 Mont. 453, 461, 197 Pac. 832 the court stated:

" . . . Where the special statute is later, it will be regarded as an exception to or qualification of the prior general one. (citing cases.)" See *In re Wilson's Estate*, 102 Mont. 178, 195, 56 Pac. (2d) 733 and *Adair v. Schnack*, 117 Mont. 377, 385, 161 Pac. (2d) 641.

In considering general and special statutes the Montana Supreme Court stated in *re Stevenson*, 87 Mont. 486, 498, 289 Pac. 566:

“. . . Where one statute deals with a subject in general and comprehensive terms and another deals with a part of the same subject in a more minute and definite way, to the extent of any necessary repugnancy between them the special will prevail over the general statute.”

A general statute will not repeal a special statute without express words of repeal. *State ex rel. Charette v. District Court*, 107 Mont. 489, 495, 86 Pac. (2d) 750, *State Aeronautics Commission v. Board of Examiners*, 121 Mont. 402, 417, 194 Pac. (2d) 633 and *Equitable Life Assurance Co. v. Hart*, 55 Mont. 76, 88, 173 Pac. 1062. Sections 93-305 and 93-313 created an exception for district court judges by granting actual travel expenses instead of a specific mileage allowance. The amendments to Section 59-801 which were subsequent to the enactment of Sections 93-305 and 93-313 did not affect those covered by the mileage allowance. There is no indication of a legislative intent to repeal the actual travel expenses permitted by these two statutes for district court judges.

Section 59-802 was enacted by Chapter 80, L. 1923. The Section has always been amended by the same chapters of the session laws that amended Section 59-801. The original act granted mileage allowance for state officers using their own automobiles while on state business. The act was enacted subsequent to Sections 93-305 and 93-313 and did not expressly repeal either section. In *re Stevenson*, supra. As enacted and amended the statute has always stated that the specific mileage allowance applies “. . . unless otherwise specifically provided by law . . .” Since Sections 93-305 and 93-313 specifically authorize actual travel expenses for district court judges then 59-802 is not applicable to such officers by the very terms of the act.

Therefore, it is my opinion that district court judges are entitled to actual travel expenses permitted by Sections 93-305 and 93-313, RCM, 1947. The mileage allowance of 7c per mile provided by Sections 59-801 and 59-802, RCM, 1947, is not applicable to district court judges.

Very truly yours,
FORREST H. ANDERSON
Attorney General