

Opinion No. 25

COUNTY COMMISSIONERS; Expenses, mileage—OFFICES AND OFFICERS; County, mileage—MILEAGE; see Offices and Officers—Sections 25-508 and 59-801, R.C.M., 1947.

- HELD:**
- 1. County commissioners are entitled to reimbursement for travel expenses incurred while they are on business, which by virtue of their office, they have found it necessary to attend to.**
 - 2. Mileage shall be paid to county commissioners, for such trips, at the rate established by Section 59-801, R.C.M., 1947.**

November 8, 1963

Mr. Albert E. Leuthold
State Examiner
State Capitol
Helena, Montana

Dear Mr. Leuthold:

You have requested my opinion as to whether county commissioners may receive reimbursement for travel expenses incurred while performing official duties outside of their county.

This question was answered in the negative in Volume 19, Opinion No. 274, Report and Official Opinions of Attorney General. That opinion was based upon the plain meaning of the statute as it then read. The statute in question, formerly section 443, Revised Codes, 1935, now section 25-508, R.C.M., 1947, is quoted in pertinent part below. The words which have been crossed through are the words which have been omitted from the statute by subsequent amendment. The words which are underscored are the words which have been added to the statute by subsequent amendment.

“(1) Hereafter no state, county, city or school district officer or employee of the state, or of any county or city or of any school district, shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers, save and except for attendance upon such convention, meeting or other public gatherings as said officer **or employee** may by virtue of his office (be required by law) **find it necessary** to attend. * * * ”

The primary object of statutory construction is to ascertain and effectuate the intent of the legislature as shown by the law before its passage, the changes made, and the apparent motive for making the changes. Viewing the statute, its interpretation and amendment in this light, it is apparent that the legislature has authorized the payment of travel expenses for such trips as a public officer has determined are necessary for the performance of official duty.

Section 25-508 (2), R.C.M., 1947, further provides:

“Provided, further, three (3) members of the board of county commissioners, may be allowed actual transportation expenses and per diem for attendance upon any general meeting of county commissioners or assessors held within the state not oftener than once a year and the proportionate expenses and charges against each county as a member of such association shall also be paid; * * * ”

This statute authorizes the payment of actual travel and per diem expenses while the county commissioners are attending annual meetings of the county commissioner or county assessor associations. This subdivision of the statute does not authorize the payment of transportation expenses for trips taken other than for the attendance at association meetings. It has long been established in this state that reimbursement for expenses incurred in the performance of official duties cannot be allowed unless some specific provision of the law authorizes such action, **Wight v. Board of County Commissioners** (1895) 16 Mont. 479, 482; 41 Pac. 271. Therefore, it is necessary to examine other provisions of the law to determine the rate of reimbursement that is allowable for travel expenditures. Section 16-912, R.C.M., 1947, pertains to the compensation which county commissioners shall receive for the performance of their official duties, and as such, it does not apply to reimbursement of expenses incurred for travel.

Section 59-801, R.C.M., 1947, provides:

“Members of the legislative assembly, state officers, township officers, jurors, witnesses, county agents, and all other persons, except sheriffs, who may be entitled to mileage, when using their own automobiles or airplanes in the performance of official duties, shall be entitled to collect mileage at a rate of eight cents (8¢) per mile for the distance actually traveled by automobile, and at the rate of twelve cents (12¢) per air mile for the distance actually traveled by airplane, and no more unless otherwise specifically provided by law; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310, R.C.M., 1947.”

Thus, mileage must be allowed at the rate authorized by this statute. However, your attention is called to Volume 15, Opinion No. 33, Page 34, Report and Official Opinions of Attorney General, as nothing herein is intended to overrule or amend that opinion.

Therefore, it is my opinion that:

1. County commissioners are entitled to reimbursement for travel expenses incurred while they are on business, which by virtue of their office, they have found it necessary to attend to.

2. Mileage shall be paid to county commissioners, for such trips, at the rate established by section 59-801, R.C.M., 1947.

Very truly yours,

FORREST H. ANDERSON
Attorney General