

VOLUME NO. 35

Opinion No. 46

JURIES — Jurors, mileage of; COURTS — Jurors, mileage of. Sections 25-401 and 59-801, R.C.M. 1947.

HELD: 1. Grand and trial jurors should be paid eight cents (8¢) per mile for travel to and from their residence and the county seat.

2. The mileage allowance provided by section 59-801, R.C.M. 1947, does not apply to grand and trial jurors.

December 19, 1973

Mr. Thomas A. Olson
Gallatin County Attorney
Office of the County Attorney
Bozeman, Montana 59715

Dear Mr. Olson:

You have requested my opinion on the following question:

Which statute, section 59-801, R.C.M. 1947, or section 25-401, R.C.M. 1947, governs the mileage allotment allowed grand and trial jurors?

Section 59-801, Revised Codes of Montana, 1947, provides in pertinent part:

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 twelve cents (12¢) per mile** by the shortest regularly traveled automobile route when travel is by private plane, and no more unless otherwise specifically provided by law; ... (Emphasis supplied)

Section 25-401, R.C.M. 1947, provides:

Grand and trial **jurors shall receive** twelve dollars (\$12) per day for attendance before any court of record and **eight cents (8¢) per mile** each way for traveling from and to their residence and county seat ... (Emphasis supplied)

Both sections provide for a mileage allotment for jurors.

Section 59-801, *supra*, is a general statute relating to various classes of persons performing official duties, and section 25-401, *supra*, is a special statute relating to jurors. As a general rule of statutory construction, a special statute will prevail over a general statute. Section 93-401-16, R.C.M. 1947. In considering general and special statutes, the Montana Supreme Court stated in *In re Stevenson*, 87 Mont. 486, at page 498, 289 P. 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.

Through the years, both statutes have been amended in terms of the amount allowed for mileage. The general statute, section 59-801, was most recently amended in 1973. However, the 1973 legislation did not repeal the mileage allotment for jurors as provided by the special statute, section 25-401, *supra*. 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 P.2d 750; **State Aeronautics Commission v. Board of Examiners**, 121, Mont. 402, 417, 194 P.2d 633. Therefore, the special statute, section 25-401, is paramount and controls in this instance.

THEREFORE, IT IS MY OPINION:

1. Grand and trial jurors should be paid eight cents (8¢) per mile each way for traveling between their residence and the county seat as provided in section 25-401, *supra*.
2. The mileage allowance of twelve cents (12¢) per mile provided by section 59-801, *supra*, is not applicable to grand and trial jurors.

Very truly yours,

ROBERT L. WOODAHL
Attorney General