

VOLUME NO. 36

Opinion No. 50

JUVENILE DELINQUENTS—Probation officers, expenses; OFFICES AND OFFICERS—Juvenile probation officers, expenses. House Bill 621, 44th Legislative Assembly, 1975; Sections 59-538, 59-801 and 10-1234, R.C.M. 1947.

- HELD:**
- 1. Actual expenses, referred to in section 10-1234, include the reasonable amount expended for subsistence, meals and transportation by a juvenile probation officer while on necessary travel incident to official duties.**
 - 2. Section 10-1234 governs the payment of expenses and mileage for the juvenile probation officer.**

January 13, 1976

Mr. Ronald W. Smith
 County Attorney
 County of Hill
 Havre, Montana 59501

Dear Mr. Smith:

You have requested my opinion on the following questions:

1. What is the definition of actual expenses as provided in section 10-1234?
2. Which section of law, 10-1234 or 59-801 governs the payment of expenses and mileage for the juvenile probation officers?

It is my understanding that a conflict exists between the provisions of section 10-1234 and section 59-801 in regard to the expenses of juvenile probation officers.

Section 10-1234 reads in pertinent part:

For all necessary travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the probation officer shall, in addition to his office salary, be reimbursed for actual expenses incurred.

Section 59-801 reads in pertinent part:

(1) **Automobiles:** Members of the legislature, 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 in the performance of official duties, are entitled to collect mileage for the distance actually traveled by automobile 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.

(3) Where a privately owned vehicle is used because a government owned or leased vehicle is not available for use or it is in the best interest of the governmental entity that a privately owned vehicle be used, a rate equal to the mileage allotment allowed by the United States internal revenue service for the next preceding year shall be paid for the first one thousand miles (1,000) and three cents (3 cents) per miles less for all miles thereafter traveled within a given calendar month.

Section 59-801 was amended in 1975 by House Bill 621. This bill also amended over sixty other sections to conform with the new provisions of section 59-801. In many of these sections, language such as "actual and necessary expenses", "actual travel and other expenses", and "necessary traveling and subsistence expenses", were replaced with "travel expenses as provided for in sections 59-538, 59-539, and 59-801". Sections 59-538 and 59-539 deal with the amount and computation of travel allowances.

The legislature did not include section 10-1234 in House Bill 621. The language of the bill is plain, unambiguous, direct and certain, and leaves nothing to be construed. **Montana Chapter, National Electrical Contractors Association v. State Board of Education**, 137 Mont. 382, 352 P.2d 258 (1960).

Section 10-1234, which allows juvenile probation officers to be reimbursed for actual expenses incurred is a specific statute. It is well accepted that where one statute deals with a subject matter generally and another specifically, the latter will prevail. **Story Gold Dredging Co. v. Wilson**, 106 Mont. 166, 76 P.2d 73 (1938), **City of Billings v. Smith**, 158 Mont. 197, 490 P.2d 221 (1971). This is further supported by language in section 59-801 which provides for exceptions to the requirements of that statute. The section states that those who are entitled

to collect mileage can collect it for "... the distance actually traveled by automobile and no more unless otherwise specifically provided by law". Section 10-1234 specifically provides that juvenile probation officers shall "... be reimbursed for actual expenses incurred".

The Montana Supreme Court recently addressed the problem as to what is involved in "actual and necessary" expenses. In **In the Matter of Actual Necessary Expenses of Judges**, 32 State Reporter 1010, (1975), the court noted that actual and necessary travel expenses included expenses for subsistence, lodging and transportation. (Expenses for subsistence and lodging must be reasonable expenses.) The court stated that where a private automobile is used for transportation, costs include gasoline, insurance, tires, depreciation and general upkeep. This cost would, of course, be pro-rated for the time the car is used on state business.

THEREFORE, IT IS MY OPINION:

1. Actual expenses, referred to in section 10-1234, include the reasonable amount expended for subsistence, meals and transportation by a juvenile probation officer while on necessary travel incident to official duties.
2. Section 10-1234 governs the payment of expenses and mileage for the juvenile probation officer.

Very truly yours,
ROBERT L. WOODAHL
Attorney General