

VOLUME NO. 41

OPINION NO. 12

COURTS - Compensation of court reporters;
COURTS, DISTRICT - Compensation of court reporters;
PUBLIC OFFICERS - Compensation of court reporters;
SALARIES - Compensation of court reporters;
MONTANA CODE ANNOTATED - Sections 3-5-602 to 3-5-604.

HELD: Court reporters, under Title 3, chapter 5, part 6, MCA, are not entitled to additional compensation, above and beyond traveling expenses, when traveling with their judge outside their judicial district.

10 May 1985

Ronald W. Smith
Hill County Attorney
Hill County Courthouse
Havre MT 59501

Dear Mr. Smith:

You have requested my opinion on the following question:

Are court reporters, under Title 3, chapter 5, part 6, MCA, entitled to additional compen-

sation, above and beyond travel expenses, when traveling with their judge outside their judicial district?

Montana statutes provide for two types of compensation for court reporters: (1) a base annual salary, § 3-5-602, MCA, and (2) professional fees for preparing transcripts, § 3-5-604, MCA.

Court reporters are also entitled to be reimbursed for travel expenses. § 3-5-602(2), MCA. However, reimbursement is not compensation, and the statute specifically provides that no compensation, other than a base salary and professional fees, will be paid. § 3-5-602(1), MCA.

The Montana Supreme Court interpreted the predecessor of the current statute, and noted that:

In view of the strictly prohibitory language of the legislature, limiting the stenographer's salary and fees to definite specified amounts for definite services rendered, it is incumbent upon the stenographer clearly and unequivocally to show that his claim comes within the statute allowing fees over and above his official salary. If he is unable to do this, the presumption is that his services were rendered for his official salary. ...

Pelletier v. Glacier County, 107 Mont. 221, 225, 82 P.2d 595, 597 (1938).

As I understand the facts in your case, court reporters have been paid a full salary in their home judicial districts, but have also requested an additional salary when traveling with their judge outside their home district. No statutory justification for the additional salary has been presented. Therefore, under the language of Pelletier, the request must be denied.

In addition, section 3-5-603, MCA, provides that the court reporter must attend all sittings of the court as part of his official duties. Since the court reporter is appointed by the district judge, it is apparent that the "court" referred to in section 3-5-603, MCA, is the district judge, and not the building occupied by the judge. Cf. Black's Law Dictionary 318 (5th ed. 1979).

Consequently, the court reporter is required to travel wherever his judge goes, unless excused by the judge. § 3-5-603, MCA. Clearly, the work done while traveling with his judge outside their judicial district is part of the court reporter's official duties, and no additional compensation is warranted.

THEREFORE, IT IS MY OPINION:

Court reporters, under Title 3, chapter 5, part 6, MCA, are not entitled to additional compensation, above and beyond traveling expenses, when traveling with their judge outside their judicial district.

Very truly yours,

MIKE GREELY
Attorney General