

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 124

COUNTY ATTORNEYS - County attorney entitled to receive "actual traveling expenses" for attendance at annual convention of state officeholders association;
COUNTY OFFICERS AND EMPLOYEES - County travel policy subject to requirement that county attorneys, sheriffs,

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assessors, and justices of the peace are entitled to receive "actual traveling expenses" for attendance at annual convention for the office held;
MONTANA CODE ANNOTATED - Section 7-5-2145(3);
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 77 (1984).

HELD: In attending the annual state convention for the office held, a county attorney, sheriff, assessor, or justice of the peace is entitled to obtain "actual traveling expenses" which may exceed the levels established in a county travel policy.

16 November 1988

Lee Kerr
Treasure County Attorney
P.O. Box 72
Hysham MT 59038

Dear Mr. Kerr:

I have reviewed your recent opinion request in which you ask whether a county attorney, sheriff, assessor, or justice of the peace, in attending the annual state convention for the office which he holds, is limited in his travel expense reimbursement by a county travel policy or is entitled to "actual traveling expenses" pursuant to section 7-5-2145(3), MCA. Based upon 40 Op. Att'y Gen. No. 77 at 309 (1984), and the clear meaning of the statute, I conclude that, in the instance of attending the annual meeting of the officeholders for the office which each holds, these county officers are entitled to "actual traveling expenses," which may exceed the established county travel policy. I also find that the statute providing for "actual traveling expenses" is not limited solely to transportation costs, but includes normal expenses incident to travel such as lodging and meal costs.

Section 7-5-2145, MCA, states in relevant part:

(3) County attorneys, sheriffs, assessors, and justices of the peace may attend their respective meetings or conventions held within the state and are allowed actual traveling expenses, not more often than once a year, for attending the same.

In 40 Op. Att'y Gen. No. 77 at 313, I concluded in part:

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Except as may otherwise be specified
statutorily, a board of county commissioners
with general governmental powers may adopt
rules and regulations providing for payment or
reimbursement of reasonable meal and lodging
expenses incurred by county officers or
employees in the performance of official
duties. [Emphasis added.]

One of the statutory exceptions to this general
conclusion, referred to specifically in my prior
opinion, is section 7-5-2145(3), MCA, which allows for
"actual traveling expenses" for attendance at the
specified officer's annual convention. Other statutory
exceptions are likewise noted in my previous opinion.

THEREFORE, IT IS MY OPINION:

In attending the annual state convention for the
office held, a county attorney, sheriff, assessor,
or justice of the peace is entitled to obtain
"actual traveling expenses" which may exceed the
levels established in a county travel policy.

Very truly yours,

MIKE GREELY
Attorney General