

GENERAL ASSEMBLY: Mileage of members attending session.

June 2, 1943

Representative W. N. McDonald
and
Representative R. H. Ridenhour
House of Representatives
Jefferson City, Missouri



Gentlemen:

Today you have requested the opinion of the Attorney-General upon the following:

"Your opinion is respectfully requested as to the proper amount of mileage each member of the General Assembly should receive for attending the present session.

"We understand that the State Auditor ascertained from the State Highway Commission the number of miles by the State Highways to the county seat of each member's county, and has adopted that figure for the purpose of computing mileage."

At the General Election held on November 3rd, 1942, the voters of our state adopted a new section 16 to Article IV of the Constitution and repealed old section 16 and sections 21 and 22 of such article. The new section 16 is as follows:

"The members of the General Assembly shall severally receive from the State Treasury for their services a monthly salary of one hundred and twenty five dollars per month commencing as of January 1st next following the adoption of this Section, and upon certification by

the President and Secretary of the Senate, and by the speaker and chief clerk of the House of Representatives, as to the respective members thereof, the State Auditor is hereby directed and empowered to audit and the State Treasurer to pay such compensation without legislative enactment. The members of either house shall also receive the sum of one dollar (\$1.00) for every ten miles they shall travel in going to and returning from their place of meeting, once in each session, on the most usual route."

(Underscoring added.)

The above amendment became effective January 1st, 1943, and the underlined portion determines the rate and amount of mileage of legislators. This provision is self-enforcing (State ex rel. McKittrick v. Wymore, 119 S. W. (2d) 941, 343 Mo. 98), and all prior statutory and Constitutional provisions on the question are invalidated thereby. State ex rel. McKittrick v. Bode, 113 S. W. (2d) 805, 342 Mo. 162; State ex rel. Dengel v. Hartmann, 96 S. W. (2d) 329, 339 Mo. 200; Marsh v. Bartlett, 121 S. W. (2d) 737, 343 Mo. 526.

The amendment provides that members of the General Assembly "shall * * receive the sum of one dollar (\$1.00) for every ten miles they shall travel in going to and returning from their place of meeting, once in each session, on the most usual route." It is noticeable that mileage is allowable for "miles they shall travel in going to and returning from their place of meeting," and not from their county seat to the State Capitol Building. Such wording is definite, clear and certain and should be given effect. State ex inf. Norman v. Ellis, 28 S. W. (2d) 363, 325 Mo. 154.

Thus, if Representative X lived five miles north of Columbia, Missouri, he would be entitled to such five miles in addition to the distance by highway 63 from Columbia to

the State Capitol Building, as such highway is apparently "the most usual route" from Columbia to Jefferson City.

As mileage is allowable on the basis of the most usual route, a question of fact may arise. These words evidently are not used in a technical sense and should be understood in their usual and ordinary meaning. State ex rel. Barrett v. Hitchcock, 146 S. W. 40, 241 Mo. 433; State ex rel. and to the use of Buck v. Railway Co., 174 S. W. 64, 263 Mo. 689. This language to us indicates the route most commonly used, or, the most popular way. The route might be by highway or railroad, depending upon general usage in each instance at the present time. It does not mean, however, that Representative X, hereinabove alluded to illustratively, could claim mileage by rail or highway from Columbia to Kansas City and thence to Jefferson City, as such would not be the most usual route from his residence in Boone County to Jefferson City and the State Capitol Building.

The base designated in the Constitutional provision is one dollar for every ten miles legislators shall travel in going to and returning from the State Capitol Building in each session. This is but another way of saying that each member shall be allowed ten cents a mile for each mile traveled on the most usual route from his home to the State Capitol Building, but only one round trip shall be allowed for each session. The argument may be advanced that the base is one dollar for each ten miles and that any fraction under ten miles would entitle a member to one dollar mileage, or, in other words, that each full ten mile unit would amount to one dollar, while a fraction over a ten mile unit would likewise entitle a legislator to one dollar. We do not believe that the voters intended to pay one dollar for a ten mile unit and an additional dollar for two miles in excess of a ten mile unit, but that the people actually intended that the legislators would be compensated ten cents per mile for the miles traveled.

"In determining the true meaning and scope of constitutional and statutory provisions, the intent and purpose of the lawmakers is of primary importance."

Graves v. Purcell, 35 S. W. (2d) 543, 1. c. 547, 337 Mo. 574.

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The draftors of the amendment evidently intended that members of the General Assembly were to be compensated upon the basis of the miles actually traveled on the most usual route, which would mean that the actual mileage is computed upon the basis of ten cents, rather than upon a unit of ten miles at one dollar.

CONCLUSION

In the opinion of this department, members of the General Assembly are entitled to mileage at the rate of ten cents per mile for each mile traveled in going from their home to the State Capitol Building, and return therefrom, once each session, or, mileage for one round trip, on the most usual or most commonly used route at the present time; and, it is a question of fact in each instance as to what route constitutes the most usual route.

Respectfully submitted,

VANE C. THURLO
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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