

**PROSECUTING ATTORNEY'S  
MILEAGE:**

A prosecuting attorney is not entitled to mileage for driving to the magistrate court in a town other than the town in which he resides, but in the same county, in order to discharge his official duties. However, prosecuting attorneys may be reimbursed for actual and necessary traveling expenses incurred in the investigation of crimes.

September 17, 1959

Honorable Frederick E. Steck  
Prosecuting Attorney  
Scott County  
Sikeston, Missouri



Dear Mr. Steck:

I have your letter of August 10, 1959, requesting my opinion regarding certain matters of mileage connected with the discharge of your duties. Your letter reads:

"I am the Prosecuting Attorney of Scott County. The County Seat is located in Benton, Missouri, and I live in Sikeston, Missouri. The Magistrate Judge of said Scott County holds Court on Tuesday mornings in Sikeston, Missouri, and on Wednesday mornings at the Court House in Benton, Missouri. Is the Prosecuting Attorney entitled to mileage for driving back and forth to the Magistrate Court in Benton, since, even if he lived in Benton which is the County Seat, he would still have to travel once a week to Sikeston, Missouri.

"Also I would like to know when the Prosecuting Attorney has to go to Benton to the County Jail for the purpose of talking to or interrogating persons arrested in regard to a crime he is being charged with, is he entitled to mileage for this?"

In regard to your first question I find no statutory authority which would entitle the prosecuting attorney to receive mileage under the conditions set forth in your question. You are aware of the principle of law set forth in the case of Nodaway County vs. Kidder, 129 SW2d 857, 1.c. 860 (8), in which the Supreme Court held:

"It is well established that a public officer claiming compensation for official

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duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S.W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S.W. 655; Williams v. Chariton County, 85 Mo. 645."

In view of the fact that there does not appear to be any statutory authority for mileage under the circumstances here involved and in view of the legal principle set forth in the Nodaway County case that before a county official can receive compensation he must point to the law which authorizes it, I believe that the answer to your first question is in the negative.

In regard to your second question, which is as to mileage in the investigation of crimes I enclose copies of the following opinions:

February 26, 1941, Robert P. C. Wilson, III,  
Prosecuting Attorney Platte County  
January 23, 1947, James L. Paul, Prosecuting  
Attorney, McDonald County;  
August 7, 1951, R. M. Gifford, Prosecuting  
Attorney, Sullivan County.

You will note that the above opinions hold that the prosecuting attorney may be reimbursed for actual and necessary traveling expenses incurred in the investigation of crimes. If your travels to the jail in Benton can come within this category, then on the basis of the opinions enclosed you would be entitled to reimbursement. Whether it would come within this category is a matter which I believe would have to be determined in each particular case.

#### CONCLUSION

It is the opinion of this department that a prosecuting attorney is not entitled to mileage for driving to the magistrate court in a town other than the town in which he resides but in the same county in order to discharge his official duties.

It is the further opinion of this department that prosecuting attorneys may be reimbursed for actual and necessary traveling expenses incurred in the investigation of crimes.

Honorable Frederick E. Steck

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh F. Williamson.

Yours very truly,

JOHN M. DALTON  
Attorney General

HPW/miw  
Enclosures