

**OPINION 65-210****Syllabus:**

Under the provisions of Section 2313.34, Revised Code, as amended effective November 11, 1965, the Board of County Commissioners does not have authority to allow payment to a juror for mileage plus compensation even though such total sum would not exceed ten dollars per day.

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**To: George Cleveland Smythe, Delaware County Pros. Atty., Delaware, Ohio**  
**By: William B. Saxbe, Attorney General, November 30, 1965**

You request my opinion on the following question:

"Under the provisions of Section 2313.34, R.C., as amended, may the County Commissioners by resolution fix the compensation of jurors at a stated fee per day, plus mileage, with the total not to exceed ten dollars per day, in order to avoid inequities for jurors who must travel much farther than jurors who reside near the Court House?"

The relative portion of Section 2313.34, Revised Code, prior to amendment thereof, is as follows:

"\* \* \* The compensation of each juror shall be fixed by order of the court of common pleas, not to exceed five dollars for each day's attendance, and in addition thereto, said juror shall be allowed five cents a mile for each mile traveled by said juror by the nearest route from said juror's place of residence to the county seat and return to home once per day, payable out of the county treasury. \* \* \*" (Emphasis added)

The relevant portion of such Section 2313.34, supra, as amended effective November 11, 1965, is as follows:

"\* \* \* The compensation of each juror shall be fixed by resolution of the board of county commissioners, not to exceed ten dollars for each day's attendance, payable out of the county treasury. \* \* \*"

The following is quoted from the Court's opinion in the case Malone v. Industrial Commission, 140 Ohio St., 292, at page 299:

"\* \* \* When an existing statute is repealed and a new statute upon the same subject is enacted to include an amendment, as in this case, it is presumed that the Legislature intended to change the effect and operation of the law to the extent of the change in the language thereof. State, ex rel. Durr, v. Spiegel, 91 Ohio St., 13, 109 N.E., 523; County Board of Education of Hancock County v. Boehm, 102 Ohio St., 292, 301, 131 N.E., 812; and State, ex rel. Methodist Children's Home Assn., v. Board of Education, 105 Ohio St., 438, 444, 138 N.E., 865.

"\* \* \* \* \* \* \*"

Any specific reference to payment for mileage has been omitted from Section 2313.34, supra, as amended. A sound interpretation of this statute, as amended, must consider the legislature's intent in this omission. Prior to amendment the statute specifically authorized the payment of compensation and in addition thereto each juror was allowed five cents a mile as mileage from his residence. The deletion of all language pertaining to payment for mileage is indicative of the legislative intent that there shall be no further payment for the expenses incurred in traveling. Furthermore, the legislative use of the word compensation does not comprehend any specific payment for mileage.

Accordingly, in response to your request my opinion is as follows:

Under the provisions of Section 2313.34, Revised Code, as amended effective November 11, 1965, the Board of County Commissioners does not have authority to allow payment to a juror for mileage plus compensation even though such total sum would not exceed ten dollars per day.