

County Commissioners, Per Diem Of. Fees, of County Commissioners.

When by an order of the board of county commissioners one of its members is directed to inspect some bridge or highway, such member for that service is entitled to receive \$5.00 per day. No additional allowance is made for expenses.

March 30, 1911.

Hon. P. E. Allen,
County Attorney,
Red Lodge, Montana.

Dear Sir:

I am in receipt of your letter of the 28th inst., requesting the opinion of this office upon the following question:

"The county commissioners of this county have requested that I advise them regarding the fees they be allowed, more especially if they be allowed fees and expenses for looking over roads, bridges, etc., prior to and after they had been completed?"

I also acknowledge receipt of a copy of the official opinion which you rendered the board of county commissioners upon such question, pursuant to instructions of this office of March 15th, 1911.

By the provisions of Section 1387 of the Revised Codes of Montana, the board of county commissioners may, by order, direct any member of the board * * * to inspect the condition of any highway or bridge in the county, etc. And Section 1388 provides:

"Such member of said board shall receive for making said inspection the sum of five dollars per day * * * * which sums must be in full payment for mileage, expenses and per diem for the services aforesaid, etc."

In your opinion you advised the board that this section means that the sum of five dollars a day and actual expenses shall be allowed the commissioners while making such inspection as Section 1387 provides for. In so far as you have advised that such commissioner is entitled to actual expenses in addition to the five dollars a day, it is my opinion that you are in error. Section 1388 deals with the compensation of the member of the board of county commissioners who may be making any inspection, and also deals with the per diem and actual traveling expenses of the county surveyor, and "expenses" has no application to the county commissioner, who receives five dollars per day in full payment for mileage, expenses, and per diem.

You further state in your opinion that "this section only provides for the pay of actual expenses of one county commissioner for the particular inspection, and further that it only provides that such per diem will be allowed when the new road or bridge has been completed or repaired, and does not mean for inspecting that road or bridge prior to the letting of the contract of the work done, and is only for the purpose of inspecting some completed project before paying for that work." I have agreed with your opinion in so far as it relates to the

one member of the board of county commissioners who may be ordered or required to make such inspection is concerned, but from an examination of the latter part of Section 1387 it is my opinion that such inspection may be with reference to any highway or bridge in the county, irrespective of whether such highway or bridge is a new one or one upon which repairs have recently been made, and such inspection may relate, as suggested in your letter, to some completed project before paying for the work.

Before any such inspection may be made and the commissioner be entitled to receive any compensation therefor, such commissioner must be engaged in carrying out some matter of which the board, in regular session, or duly called special session, has acted upon as a board, and then delegated authority to a member of the board to supervise the carrying out of such order.

The views hereinabove expressed have been heretofore passed upon by this office in an opinion rendered to the Hon. B. F. Maiden, county attorney of Lincoln county, which you will find upon page 398, Vol. 3, Opinions of Attorney General. See also Vol, 2, Opinions of Attorney General, page 80 and page 100.

Yours very truly,

ALBERT J. GALEN,

Attorney General.