Elections, Expenses of Canvassing Board, Payment of.

Persons who act as a canvassing board in computing election returns are entitled actual expenses only.

October 4, 1920.

Mr. Dwight N. Mason,
County Attorney,
Missoula, Montana.

Dear Sir:

I have your letter of September 23rd, in which you ask for an opinion upon the proposition of whether or not A. Sullivan, Justice of the Peace of one of the townships of your county may be allowed payment from the county funds for his statement rendered, the amount of which was incurred as a member of the canvassing board at the last primary election, the items of which are as follows:

Canvassing election returns, 4 days at $8.00 per day,	$32.00
Mileage, 130 miles, at 10c per mile	13.00
Total	$45.00

I agree with you when you say that there is no statutory provison for the payment of these particular items. You also say that "as a matter of right those justices who do not come within the salary provisions of the law ought to be paid for their services.' I take it, therefore, that Mr. Sullivan is a Justice of the Peace of a township in your county, the emoluments of which are limited to fees.

Sections 3175 and 3176 of the Revised Codes provide the fees which may be charged and which must be paid to justices of the peace. There has been some additional legislation upon the subject, but it is not material so far as this question is concerned. No legislation, either expressly or by necessary implication, provides for the payment of such items as Mr. Sullivan has presented against your county. By Section 23 of the Primary Election Act, Laws of 1913, it is made the duty of the two justices of the peace on whom the county clerk calls to assist the clerk in canvassing election returns.

The general rule of law is that a county board can allow compensation to county officers only when authority so to do is conferred clearly and unequivocally by statute, and then only in the manner and in direct accordance with the language used therein. (15 C. J. 506, Section 173 E.) It is also a rule of law that a county officer or one

claiming compensation from a county must be able to show not only that the services were performed to the county as such, but also a statute or a constitutional provision authorizing compensation for the particular services in question. (15 C. J. 496, Section 161.) I believe further that it may be said that when enumerating fees which a particular officer may charge, it will be presumed that the legislature meant to designate with precision the services for which he should receive fees, and that such fees should be in full compensation for services incidental to his office. (Cd. 498, Section 162.)

A proposition somewhat analogous to the case which you present arose in the case of Sears vs. Gallatin County, 20 Mont. 62, 52 Pac. 204. The analogy between the two cases consists of the fact that the claimant in the Sears case presented a bill against Gallatin County for services rendered for which no provision was made by statute for the payment thereof. The plaintiff contended that Section 3199 of the Revised Code authorized the county commissioners to make payment of such claim on the ground that it is a contingent expense necessarily incurred for the use and benefit of the county. The Supreme Court, however, interpreted this to mean that the contingent expense must be one definitely and previously authorized by law. In the case of Wade vs. Lewis and Clark County, 24 Mont. 335, 61 Pac. 880, we find that the surveyor whose compensation was fixed at $5.00 per day, presented in addition a statement for expenses incurred in traveling about the county. The charge was at the rate of ten cents per mile. His account was rejected and thereupon the claimant brought suit. The Supreme Court held in effect that there was no statutory authorization for the payment of this claim and therefore it was the duty of the county commissioners to reject the same.

Certainly, in no event, could the claimant charge the county of Missoula with a per diem of $8.00 while attending as a member of the canvassing board. If he could present a claim of $8.00 per day he might just as well present a claim of $25.00. As to his expenses, we have a different situation. Usually where expenses are allowed by statute the law is that it is confined to actual expenses. There is nothing unjust in making it the duty of a justice of the peace to attend as a member of the canvassing board and discharge the duties of such without compensation. It might with propriety be said that the legislature intended this as a part of the justice's duty without compensation. As to the expenses which the justice incurs the situation is somewhat different. I do not believe that he should be compelled to spend his own money for and on behalf of the county if it is at all possible to find some provision of law which could justify county commissioners in reimbursing the expenditure.

Turning to the Primary Law itself, we find Section 19, which provides as follows:

> "The blanks, ballots, poll books, and other supplies to be used at any primary shall be provided, and all the expenses necessarily incurred in the preparation for **or conducting such**

> **primary** shall be paid out of the treasury of the county in the same manner and by the same officers as in the case of elections."

The matter of canvassing the election returns certainly is a art of the primary system and is "conducting such primary". I am of the opinion, therefore, that the county commissioners are authorized to reimburse a member of the canvassing board for actual expenses incurred. This would not, however, be ten cents per mile but would be the exact sum which such member paid out while discharging his duties.

Respectfully,
S. C. FORD,
Attorney General.