

County Surveyor—Fees of While Attending Meeting of Board of County Commissioners—Compensation for Performing Work for Board of County Commissioners.

The County Surveyor is entitled to receive the sum of \$8 per day and actual expenses for all work performed for the county under the direction of the Board of County Commissioners pursuant to Chapter 50 of the Laws of 1919 and Chapter 15 of the Laws of the Extraordinary session of 1919, and \$7 per day for all work performed under the provisions of Sections 3057 to 3061, inclusive, Revised Codes of 1907.

The County Surveyor, if ordered by the Board of County Commissioners to attend any meeting of the Board of Commissioners for the purpose of consultation in connection with official business of the county, is entitled to \$8 per day and actual expenses.

Board of County Commissioners,
Broadus, Montana.

Gentlemen:

I am in receipt of your letter in which you submit the following questions:

1. What is the proper and legal compensation of the County Surveyor when attending the meetings with the Board of County Commissioners?

2. What is the proper and legal compensation of the County Surveyor when employed in the service of the county on any engineering or construction work away from his immediate office, i.e. in his field work?

Under Sections 3057 to 3061, inclusive, of the Revised Codes of 1907, the County Surveyor is required to make certain surveys and plats when ordered or directed to do so by an order of the court, and is also required to make certain surveys and plats upon application of the individuals owning lands divided by county lines.

By Section 12, Sub-Chapter III of Chapter 172 of the 1917 Laws, the Board of County Commissioners were given authority to direct the County Surveyor to inspect the condition of any proposed highway, or highways, or work on any highway or bridge in the county during the progress of the work, and before payment therefor, and providing further that the County Surveyor shall receive for making such inspections, when directed by the Board of County Commissioners, the sum of \$7 per day and actual expenses.

Section 2 of Chapter 50 of the 1919 Laws provides as follows:

"The County Surveyor shall be ex-officio highway engineer for the county in which he resides, and shall work under the direction of the Board of County Commissioners, and under their direction and supervision he shall have charge and supervision of all highway construction and maintenance on work over which he has had supervision; make all surveys; establish grades; prepare plans, specifications, and estimates; approve all claims against the county for road and bridge construction and maintenance on which he has actual supervision before the same is passed on and allowed by the Board of County Commissioners; keep accurate cost data; report any delinquency or inefficiency of any road overseer or other person employed upon the roads within the county; from time to time make progress reports and estimates of all work and such other facts in relation thereto as may be required by the State Highway Commission, Board of County Commissioners, or both."

By an opinion rendered by S. C. Ford, former Attorney General, found in Volume 8, Opinions of Attorney General, page 96, it was held that under the provisions of Section 12, Sub-Chapter III of

Chapter 172 of the 1917 Laws, the County Surveyor was entitled to \$7 per day for all inspection work in connection with the highways, together with his actual expenses, and that under Section 3172 of the Revised Codes, 1907, he was entitled to \$7 per day for work not pertaining to the highways, and that as the law existed at that time a uniform rate of \$7 per day would be the charge for all work performed by a County Surveyor. Since the rendition of said opinion, the Legislature has passed Chapter 15 of the Extraordinary Session Laws of 1919, Section 4 of which reads as follows:

"The Board of County Commissioners may direct the County Surveyor or some member or members of said Board to inspect the condition of any proposed highway, or highways, or work on any highway or bridge in the county during the progress of the work, and before payment therefor, and such member or members of said Board shall receive for making said inspections, the sum of Eight Dollars (\$8.00) per day, and actual expenses, and the County Surveyor shall receive for making such inspection when directed and for all other work performed for the county under the direction of the Board of County Commissioners, the sum of Eight Dollars (\$8.00) per day and actual expenses, which shall be audited and allowed in the same manner as any other claims against the county."

Former Attorney General S. C. Ford, in an opinion found in Volume 8 of Opinions of Attorney General, page 282, has held that under this section of the statute the County Surveyor is entitled to \$8 per day for time employed in inspecting highways or bridges under the direction of the Board of County Commissioners, and also \$8 per day for all work performed for the county by the County Surveyor under the direction of the Board of County Commissioners.

It is my opinion, therefore, that in all work performed for the county under the direction of the Board of County Commissioners, pursuant to Chapter 50 of the 1919 Laws and Chapter 15 of the Extraordinary Session of 1919, the County Surveyor is entitled to receive the sum of \$8 per day and actual expenses, and for all other work performed under the provisions of Sections 3057 and 3061, inclusive, Revised Codes of 1907, he is permitted to charge the sum of \$7 per day by virtue of Section 3172 of the Revised Codes of 1907.

I find no provision in the law specifically making it the duty of the County Surveyor to attend meetings of the Board of County Commissioners. However, if the Board of County Commissioners order and direct the County Surveyor to attend any meeting of the Board of County Commissioners for the purpose of consultation in connection with the official business of the county, and relating to the matters referred to in Chapter 50 and Chapter 15, supra, I believe the County Surveyor would be entitled to the per diem of \$8 and actual expenses. Unless specifically ordered by the Board of County Com-

missioners, however, to attend any such meeting, the County Surveyor would not have authority to charge any per diem for attending the same.

Under the rule applied in the case of *State ex rel. Roe v. District Court*, 44 Mont. 318; *State ex rel. Payne v. District Court*, 53 Mont. 350, and *State v. Story*, 53 Mont. 573, no charge can be made by a public officer for services rendered in the absence of specific legislative authority.

It is my opinion, therefore, that a County Surveyor, if ordered and directed by the Board of County Commissioners to attend any meeting of such Board of County Commissioners for the purpose of consultation relative to the official business of the County referred to in Chapter 50 of the 1919 Laws and Chapter 15 of the Extraordinary Session of 1919, is entitled to receive the sum of \$8 per day and actual expenses, but if he attends any such meeting merely as an incident of the duties of his office, without being ordered or directed to do so by the County Commissioners in connection with such official business of the county, he is not entitled to per diem for such attendance.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.