

**Board of County Commissioners—Compensation for Examining Property to Determine if Properly Classified.**

The Board of County Commissioners are not entitled to per diem, mileage or expenses in going out to view land for the purpose of adjusting differences in its classification pursuant to their authority under Chapter 239 of the Laws of the 17th Legislative Assembly.

W. C. Hutchinson, Esq.,  
Chairman Board of County Commissioners,  
Kalispell, Montana.

My dear Mr. Hutchison:

You have requested my opinion as to whether County Commissioners are entitled to compensation for services in going out to view land

for the purpose of adjusting differences with respect to its classification under Section 8 of Chapter 239 of the 1921 Laws. This section provides in part as follows:

"If the owner of any land is dissatisfied with the classification of his land, the Board of County Commissioners shall make such investigation as they deem necessary to determine the true and correct classification of such land and when so determined, the same shall be classified in the manner ordered by the Board of Commissioners."

The compensation to which members of the Board of County Commissioners are entitled is set out in Section 2893 of the Revised Codes of 1907 as follows:

"Each member of the board of county commissioners is entitled to eight dollars per day for each days' attendance on the sessions of the board, and ten cents per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence, and no other compensation must be allowed."

Section 3111 of the Revised Codes of 1907 provides as follows:

"That members of the Legislative Assembly, state officers, county officers, township officers, jurors, witnesses and other persons who may be entitled to mileage shall be entitled to collect mileage at the rate of ten cents per mile for the distance actually traveled and no more."

Chapter 15 of the Session Laws of the Extraordinary Session of 1919 likewise makes provision for per diem of \$8 and actual expenses for inspecting the condition of any proposed highway, or work on any highway or bridge, during the progress of the work.

By numerous opinions of former Attorneys General, it has been held that the statutes above referred to allow mileage for one trip only to the session of the Board of County Commissioners. See:

Vol. 8, Attorney General Reports, p. 43;

Vol. 8, Attorney General Reports, p. 48;

Vol. 5, Attorney General Reports, p. 592.

A County Commissioner, like any other public officer, may collect for services performed only such fees or compensation as the law specifically authorizes.

The Supreme Court of this State, in the case of *State ex rel. Payne v. District Court*, 53 Mont. 350, states the general rule as follows:

"These fees are legal or illegal depending upon whether they are, or are not, authorized by law. A county commissioner can lawfully collect for services performed in virtue of his office only such fees or other compensation as the law specifically authorizes. The law authorizes per diem and mileage for attending the meeting of the board (sec. 2893, Rev. Codes), and per

diem and expenses while inspecting contract construction work on a highway or bridge, under a proper order of the board. (Laws 1915, p. 319.)”

The Laws of 1915 referred to in the above opinion by the Supreme Court have been amended by Chapter 15 of the Session Laws of the Extraordinary Session of 1919, but the amendments therein made do not, in any manner, affect the question involved in this inquiry.

The Supreme Court of this State, in the case of *State v. Story*, 53 Mont. 573, approved of the rule laid down in the case of *State ex rel. Payne v. District Court*, *supra*, and the court further held that if Section 2893 of the Revised Codes of 1907 above referred to was in conflict with Section 3194 or 2952 that Section 2893 must prevail.

There is no statute specifically authorizing the payment of fees, mileage or expenses to the County Commissioners for viewing land with the view of adjusting differences in its classification.

The sessions of the Board of County Commissioners are required to be held at the county seat (Sec. 2891, Revised Codes of 1907.)

It is my opinion, therefore, that County Commissioners are not entitled to per diem, mileage or expenses in going out to view land with a view to adjust differences in its classification pursuant to their authority under Chapter 239 of the 1921 Laws.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.