

**County Assessor—Compensation for Work Done for Board of County Commissioners.**

A County Assessor may not be allowed compensation from the county for services rendered in other departments for the same time as that for which he is drawing his salary.

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State Examiner,  
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My dear Mr. Skelton:

You have submitted the following statement and have asked for my opinion thereon:

The County Commissioners of a certain county employed a certified public accountant to make an audit of the County Clerk's books. Finding it necessary to employ help to assist the accountant in checking certain transactions, the County Assessor was engaged for this purpose. The Assessor presented the following claims to the county for such services, which were paid, the Assessor receiving his regular salary in the meantime:

For nineteen days in October, 1920, he was paid at the rate of \$6 per day, in addition to his regular salary of \$150 per month as Assessor.

For twenty-one days in November, 1920, he was paid at the rate of \$6 per day.

For ten days in the same month he was paid at the rate of \$6, making two claims covering thirty-one days, in addition to his regular salary as Assessor.

You inquire whether these claims were lawful and authorized to be paid by the County Commissioners. In some cases it is not unlawful for a public officer or employee to receive compensation from more than one department of the Government for services differing in their nature.

There are cases holding that where new duties are imposed by statute, which are not within the scope of the office, and extra compensation is definitely given by the statute for such new duties, this is permissible under constitutional provisions prohibiting an increase of salaries during a term of office.

State v. Granite County, 23 Mont. 250;  
San Luis Obispo County v. Felts, 37 Pac. 780;  
Miami County v. Collins (Kan.) 28 Pac. 175;  
United States v. Saunders, 120 U. S. 126.

It has been held that when additional duties are imposed by law upon a public officer which are germane to the office such officer is not entitled to extra compensation.

State ex rel. Rowe v. District Court, 44 Mont. 318;  
 State ex rel. Kranich v. Supple, 22 Mont. 184;  
 Board of Commissioners v. Bruce, 152 Pac. 125;  
 Donahey v. State, 129 N. E. 591;  
 State v. Clausen, 190 Pac. 324;  
 State v. Meserve, 78 N. W. 721.

While the language used in the foregoing cases supports the rule that where a public officer is being paid a fixed compensation he will ordinarily be limited thereto, the facts in none of these cases are in accord with those here presented, inasmuch as the work here undertaken in connection with auditing the Clerk's books is entirely foreign to the duties of the Assessor.

In State ex rel. Rowe v. District Court, 44 Mont. 318, the Supreme Court, in holding that where the statute fixes the compensation of a police judge it is exclusive, used the following language:

"The compensation to which he is entitled is provided for in section 3241. No reference to the subject is found elsewhere in the Codes. This provision is therefore exclusive—made so by the language found in the last clause, which seems to have been inserted purposely to prevent any misunderstanding as to what, and only what, compensation he may claim, not only from the municipality, but also from any other source."

This case, however, has, strictly speaking, application only to the compensation that may be allowed for the official act in question, and not to compensation for outside or separate employment.

In Raymond v. Commissioners, 5 Mont. 103, it was held that a County Clerk was entitled to no compensation from any source except the compensation provided by his salary, but the statute fixing his salary definitely prohibited his receiving any other compensation, and the decision was based upon that fact.

Authority upon the precise question of whether an officer may receive compensation from the county or State for two independent employments, involving pay from two sources for the same time, is scarce, doubtless for the reason that such a situation has not often arisen. A number of cases in the United States courts have denied the right to double allowances for employment under the Federal Government, but in these cases statutes directly prohibiting additional compensation from any source, except in certain cases where the combined compensations amounted to less than \$2,500, were invoked.

Leading cases under these and similar statutes are:

Converse v. United States, 16 U.S. (L. Ed.) 192;

United States v. Brindle, 110 U. S. 688;

Lewis v. United States, 244 U. S. 134;

In Re MacDonald, 248 Fed. 983.

It was held in *Collier v. United States*, 22 Ct. Cl. 125, that the prohibitory statute above referred to did not prevent additional compensation to an employee in one department whose services were given with the consent of his superior to another department, the service being given outside the hours of labor required in his department.

In the case of *County Commissioners v. Bromley*, 108 Ind., 158, it was held that where a township trustee was paid his per diem of \$2 for any given day for services as township trustee, he was not entitled to an additional per diem for the same day for services rendered as overseer of the poor, the court observing that it was not the intention of the Legislature that he should receive double pay for the same time given in public services.

The framers of the Constitution, in providing for an Assessor among the county officers, and the Legislature, in providing an annual salary for the office, scarcely contemplated that the officer should give his time to any other employment, or that he should draw pay from other governmental agencies for precisely the same time for which he is drawing a salary as Assessor. This view is supported by the language above quoted from the *Rowe Case*, 44 Mont. 318. Moreover, if it be conceded that he could draw such duplicated pay for any one day, then it would follow that he might do so for every day, and thus be drawing his salary as Assessor while giving his entire time to other employment and receiving pay therefor. In fact this precise situation seems to be presented for the month of November, 1920, in the case that you have submitted, in which thirty-one days of outside employment were paid for (although November has but thirty days), the Assessor at the same time receiving his salary for the month.

It is, therefore, my opinion that a County Assessor, or any salaried county officer, may not be allowed compensation from the county for services rendered in other departments for the same time as that for which he is drawing his salary, and that the items submitted by you do not therefore constitute a legal charge against the county, and that the County Commissioners would therefore be without authority to allow and pay the same.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.