

County Superintendent of Schools, Expenses Of.

Section 1732, Political Code, requires superintendents to visit the schools in their counties. Division 8, of Section 4681, provides that contingent expenses necessarily incurred for the use and benefit of counties are county charges. Section 1741, as amended by the laws of 1901, p. 122, provides that the necessary traveling expenses incurred in visiting schools must be allowed

superintendents in counties of the seventh and eighth classes, but such section does not prohibit the commissioners from so allowing the actual traveling expenses of superintendents incurred in counties other than the seventh and eighth classes. Held: That county commissioners have authority to allow actual traveling expenses of superintendents for visiting schools in counties other than the seventh and eighth classes.

Helena, Montana, Nov. 4, 1905.

Hon. L. H. Mills, Chairman, Board of County Commissioners, Glasgow, Montana.

Dear Sir:—Your letter of the 30th ult. received, in which you ask for an opinion as to whether the board of county commissioners of your county, which is a sixth class county, has authority to allow the actual and necessary traveling expenses incurred by the county superintendent of schools in visiting the schools of her county.

Section 1732, Political Code, provides that all county superintendents of schools shall visit every public school under their supervision at least once each official year. Division 8, of section 4681, Political Code, provides that "the contingent expenses necessarily incurred for the use and benefit of the county are county charges." Under said section 1732 the superintendent must visit each school of the county. Such visits are clearly for the use and benefit of the county, and any expenses of travel necessarily incurred in making such visits are "contingent expenses necessarily incurred for the use and benefit of the county."

The theory of the law, where a fixed salary is allowed a public officer, is that he shall receive such salary net, and that any expenses necessarily incurred by him in performing services for the use and benefit of the county are proper charges against the county, unless the law expressly declares otherwise.

Section 1742, as amended by laws 1901, p. 122, provides that in counties of the seventh and eighth classes the superintendents shall be allowed their actual and necessary expenses when engaged in visiting schools in their counties, and that such expenses shall be paid in the same manner as other county charges. Under this section the commissioners have no discretion but must allow such actual and necessary expenses when incurred. However, this section does not prohibit the commissioners of counties, other than the seventh and eighth classes, from allowing actual and necessary traveling expenses of superintendents when visiting schools.

Therefore, inasmuch as superintendents are entitled to receive their fixed salaries net, and inasmuch as such necessary traveling expenses are for the use and benefit of the county, we are of the opinion that the county commissioners have authority to allow the actual and necessary traveling expenses of superintendents when visiting schools in their counties, even though such county is not in the seventh or eighth classes.

Respectfully submitted,

- ALBERT J. GALEN,
Attorney General.