

Carey Land Act Board, Expenses of. State Engineer, Expenses of.

The per diem of the state engineer for the time devoted to matters of the Carey Land Act Board are part of the expenses to be taken out of the Carey Act funds.

Helena, Montana, November 17, 1909.

The Carey Land Act Board,
Helena, Montana.
Gentlemen:

I am in receipt of your letter of November 17, requesting an opinion construing subdivision 1, of section 2279, revised codes, relating to the payment of current expenses of the board and state engineer's office out of monies received from the sale or lease of Carey lands, the principal point raised being what is meant by the words:

"said engineer's expenses to include a charge for actual cost of time devoted to board matters."

Said section 2279 was heretofore construed in an opinion given to Honorable J. H. Rice, on October 25, 1905, (See Opinions of Attorney General 1905-06, p. 228.) However the principal point now in question was not considered in that opinion.

The first part of said subdivision 1, of section 2279, reads:

"For the payment of the current expenses of the board and of the state engineer's office hereafter incurred in carrying out the provisions of this Act."

The above language authorizes the payment of all expenses of the board, and all expenses of the state engineer's office, which are generally and ordinarily embraced under the term "expenses." Then it appears that the legislature added the remaining part of said subdivision, intending thereby to give a broader meaning than is ordinarily given to the word "expenses" by saying that the engineer's expenses shall include a charge for "actual cost of time." We do not know what this phrase, "actual cost of time" means unless it means "per diem" of the engineer when devoted to board matters as distinguished from his other duties under the law.

Therefore, in our opinion, the money received from the sale and lease

of Carey lands should be used for paying not only the current expenses of the board and of the state engineer's office, but they should also be used paying his per diem for the time he actually devotes to board matters, as it is apparently the intention of the legislature that the funds received from these Carey lands should be used to pay all expenses, whether in the form of salary or not, connected with the management and sale of such lands.

Section 2246, revised codes, fixes the engineer's salary at \$2,500.00 per annum, and the general appropriation bill for the years 1909 and 1910 has appropriated that amount of the general fund to pay his salary. Therefore, the state engineer's per diem would be based upon a salary of \$2,500.00 per year, and his salary from the general fund would be reduced to an amount equivalent to the number of days that he devoted to Board matters, for which he was paid out of the Carey Act fund.

You are further advised that reimbursements made under subdivision 2 of said section should go to the credit of the general fund of the state and not to the state engineer's expense fund, while the reimbursement provided for in subdivision 3 is placed to the credit of the state engineer's expense fund, to be used for a specific purpose as mentioned in section 2244, revised codes.

Yours very truly,

ALBERT J. GALEN,

Attorney General.