

**County Officers, Extra Compensation To. Compensation, of
County Officers. County Commissioners, Authority to Pay
Extra Compensation.**

Where a county officer is called upon to perform service having no connection either in character or by law with services required of him in his official capacity, the county commissioners of such county may lawfully allow such county officer a reasonable compensation for such services.

November 15, 1911.

Hon. Desmond J. O'Neill,
County Attorney,
Roundup, Montana.

Dear Sir:

I am in receipt of your letter of the 6th inst., wherein you state that the county commissioners of your county had appointed the county treasurer, the under-sheriff and yourself to look over the work of the contractors in transcribing the county records and to act as an auditing committee as to the value of the work. You further call attention to the fact that in performing this service for the county you worked evenings, Sundays and holidays, and you ask whether or not you are entitled to extra compensation aside from your salary for such.

We have heretofore held in an opinion to the state board of examiners, found in Vol. 3, Opinions of Attorney General, page 95, that:

"Where additional duties are imposed upon an officer he is entitled to additional compensation for such duties.

I am still of the opinion therein expressed. No new duty was by the action of the commissioners imposed upon yourself and associates. There was no connection either in character or by law between the services thus performed by yourself and associates and your duties as county treasurer, undersheriff or county attorney.

"Officers may recover for services not connected with their official duties."

29 Cyc 1424 and cases cited.

A well considered case upon this point is found in the Michigan reports where the facts were briefly that the mayor of the city of Niles, who was also an attorney at law, performed certain services for the city in a professional way in connection with some litigation in which the city was involved. The mayor presented his claim for such services and the same was opposed on the ground that he was the mayor and councilman of the city, received his salary as such, and was not entitled to any further compensation for services rendered the city. The supreme court of Michigan in discussing the question used this language:

"Neither his duty as mayor or councilman included any such service. He was no more required in consequence of his official position to employ his time and talents as counsellor at law * * * * than he was to pay the debts of the city out of his private funds."

Mayor vs. Muzzy, 33 Mich. 61.

U. S. vs. Brindle, 110 U. S. 688.

In this connection I would respectfully call your attention to the case of Raymond vs. Commissioners, 5 Montana 103, wherein the county clerk sought to recover from the county for extra services performed by him but the court in that case denied the claim for the reason that the services rendered were along the line of duty imposed by law upon the county clerk, and for that reason were fully covered by the salary provided by law. See also upon the subject generally:

Sears vs. Gallatin Co., 20 Mont., 462.

State vs. Granite Co., 23 Mont., 250

It is, therefore, my opinion that county commissioners of your county may properly allow yourself and associates, the treasurer and under sheriff, extra compensation for the services performed by you as such auditing committee.

Yours very truly,

ALBERT J. GALEN,

Attorney General.