

Officers, Extra Compensation. Offices, Compatible. State Textbook Commissioner, Duties Of. Superintendent of Public Instruction, As State Textbook Commissioner. Fees, Refund Of. Refund, of Fees.

The duties of state superintendent of public instruction and member of state textbook commission are not incompatible offices and one person may hold both offices and is entitled to recover the compensation allowed by law for each.

A person paying a fee to the secretary of state for the issuance of a commission is not entitled to a return of that fee as an expense incident to his office.

July 20, 1912.

State Board of Examiners,
Helena, Montana.

Gentlemen:

I acknowledge receipt of your letter of the 15th inst., with which you transmit claim presented by W. F. Harmon, Supt. of Public Instruction, for per diem services rendered by him as a member of the State Textbook Commission, and also covering an item of \$5.00 paid for commission as member of such textbook commission to the Secretary of State; and you ask my opinion as to the legality of the payment of the per diem claim, (2) as to the right of a refund of the amount paid to the secretary of state for issuance of commission.

As to the first question will state that the law creating the State Textbook Commission provides for the appointment of a Commission by the Governor. It appears that the Governor appointed Mr. Harmon as a member of this Commission. He is not a member of the Commission by virtue of his office as Superintendent of Public Instruction, neither are the duties as a member of the State Textbook Commission incident to his duties as Superintendent of Public Instruction. The offices of State Superintendent of Public Instruction and State Textbook Commissioner are not in my opinion inconsistent offices. The

duties performed by Mr. Harmon as a member of the State Textbook Commission are not along the line of duties imposed upon him by law as Superintendent of Public Instruction, and are not, therefore, covered by salary provided by law as such Superintendent. There is no connection by law between the services performed by him in the one capacity and services performed in the other.

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

29 Cyc 1424, and cases cited.

The Act creating the Textbook Commission provides that the compensation of the members of such commission shall be \$6.00 per day and that such service shall not extend beyond a period of ten days. From the claim presented the services embraced a period of eight days and the claimant is in my opinion entitled to compensation in the sum of \$48.00, the amount of his claim for that item.

As to the refunding of the amount paid to the Secretary of State for the issuance of his commission as a member of the State Textbook Commission, I will state, that the provisions of law relative to fees of Secretary of State provide for the payment of \$5.00 upon the issuance of a Commission. This in my opinion is not an expense of a member of the State Textbook Commission contemplated by the Act creating said commission wherein certain expenses of the members are to be paid, and it is, therefore, my opinion that no refund of the amount so paid can legally be had.

I, therefore, return claim of Mr. Harmon with the suggestion that the same be allowed in the amount of \$48.00 and disallowed in the amount of \$5.00.

Yours very truly,

ALBERT J. GALEN,

Attorney General.