

Weights and Measures, Salary of Inspector. Salary, of Inspector. Auctioneers, License of. License, of Auctioneers.

See Opinion to J. E. Kelly, June 26, 1913.

There is no law in force classifying auctioneers' license, or requiring fee therefor. Therefore, auctioneers may do business within the state without taking out license therefor.

September 12th, 1913.

Hon. Vard Smith,
County Attorney,
Livingston, Montana.

Dear Sir:

I am in receipt of your letter of the 9th instant, wherein you submit two propositions of law upon which opinions are requested. The first question propounded is:

"Should the salary and expenses of the inspector of a district established under the provisions of Chap. 83 of the Laws of the Thirteenth Legislative Session be pro-rated among the several counties comprising such district in proportion to the number of counties in the district?"

This question should be answered in the affirmative. Your attention is directed to an opinion heretofore rendered by this office, wherein the same inquiry which you propound was under consideration, the opinion referred to being dated June 26th, 1913, and ad-

dressed to Hon. J. E. Kelly, county attorney, Boulder, Montana. In this opinion the conclusion was reached that there is no provision in the act referred to requiring the inspector of weights and measures in a district comprised of two or more counties to keep any record as to the amount of work done in each of the counties of his district, or the amount of the expenses incurred in either such counties. It is pointed out that nowhere in the act is there any basis suggested for apportioning the expenses incurred, other than by means of the number of counties comprising the district; that the words "pro rata," as used in the act, are equivalent to "equality," and that the number of counties comprising the district is the only basis provided in the act for apportioning among such counties within the district the salary and expenses of the inspector.

Your second proposition:

"Is there any law in this state specifying the amount of license to be paid by auctioneers?"

Must be answered in the negative. Under the provisions of Sec. 4060; Political Code of 1895, auctioneers were divided into nine classes and were required to obtain licenses from the county treasurer according to the classification. This provision of the law continued in force until 1907, when by the enactment of Chap. 22, Session Laws of the Tenth Legislative Assembly, the second was repealed and so far as I am aware there has been no new legislation upon the subject. While it is true that Arts. I, II and III, Chap. 23, Title 7, Part III, Revised Codes of Montana of 1907, are in full force and effect, and provide for the qualifications of auctioneers and make regulations respecting sales, and provide for penalties for a violation of the various provisions set forth, yet such of the provisions of these articles as bear upon the licenses mentioned therein are of no avail, for the reason, as pointed out, that there is now no law in force classifying auctioneers' licenses and fixing the amounts to be paid therefor. I am of the opinion, therefore, that auctioneers may do business within this state without taking out license therefor.

Yours very truly,

D. M. KELLY,
Attorney General.