

County Surveyor, Traveling Expenses of. Traveling Expenses, of County Surveyor.

Under the provisions of Sec. 13, Chap. 72, Laws of 1913, the actual traveling expenses of the county surveyor when in the discharge of his duties is a valid charge against the county.

October 24th, 1913.

Hon. C. A. Linn,  
County Attorney,  
White Sulphur Springs, Montana.

Dear Sir:

I am in receipt of your letter of October 16th, submitting the following question:

"Is a county surveyor entitled to have his traveling expenses, such as railroad fare and hotel expenses, incurred in the discharge of his official duties, paid by the county, or must he pay his own expenses out of the per diem salary?"

Substantially this same question was considered by this department, relating to the per diem of county officers, in an opinion given to the Hon. X. K. Stout, county attorney of Flathead County, on June 6th, 1913, but as that opinion is not yet published, we will restate here some of the questions therein discussed.

Sec. 13, Chap. 72, Session Laws of 1913, provides for the payment by the county of the actual traveling expenses of the county surveyor. In the case you submit, the surveyor was elected prior to the enactment of this law, the question being then, Is the provisions of Sec. 31, Art. 5, of the State Constitution, prohibiting the increase or diminish of salaries or emoluments of a public officer after his election, invaded by this provision of said Chap. 72? In *Wight v. Commissioners*, 16 Mont. 479, the supreme court held that the county surveyor was not entitled to receive traveling expenses, but that decision is based upon the ground that the general provisions of the statute relating to the expenses of public officers did not apply to county surveyors, and hence there was no statutory authority for paying his expenses.

In *Apple v. County of Crawford*, 105 Pa. St. 300, 51 Am. Rep. 205, the Supreme Court of Pennsylvania seemed to indicate that a statute of this kind is an invasion of the constitutional restriction, but the Supreme Court of Montana, in the case hereinafter referred to, commented upon and distinguished Pennsylvania case.

This statutory prohibition applies with equal force to diminishing salaries and emoluments, as well as to increasing the same, hence if the legislature has the authority to diminish, it also has the authority to increase, but it must be conceded that the legislature can neither increase nor diminish either "salary" or "emolument."

In *Scharrenbroich v. Lewis and Clark County*, 33 Mont. 250, the question presented to the court was whether the legislature had the authority to change from mileage to actual expenses, the contention being made that this was a decrease in the emoluments theretofore permitted, but the court held that neither "mileage" nor "actual expenses" was within the meaning of the terms "salary" or "emoluments," and hence that increasing or diminishing the mileage or allowance for "actual expenses" was not prohibited by this provision of the constitution. On the authority of this case, it must be held

that the actual traveling expenses of the county surveyor when in the discharge of his duties, as indicated in said Sec. 13, Chap. 72, of the Session Laws of 1913, is a valid charge against the county.

Yours very truly,

D. M. KELLY,  
Attorney General.