

Board of County Commissioners, Cannot Appoint Member as Road Builder. Road Builder, Cannot be County Commissioner.

A Board of County Commissioners is prohibited from employing one of their number as a road builder for the county.

June 9, 1915.

Hon. T. F. Shea,
County Attorney,
Deer Lodge, Montana.

Dear Sir:

I am in receipt of your letter requesting an opinion upon the question as to whether a Board of County Commissioners may employ one of its members as a road builder.

Paragraph 10, Section 2 of Chapter 3 of Chapter 141, Session Laws of the Fourteenth Legislative Assembly, provides:

"They may, in their discretion, employ a competent road builder who shall be paid for his services not to exceed \$7.00 per day; who shall serve during the pleasure of the Board; whose duty it shall be, under the direction and control of said Board, to prescribe the time and place, when and where, all work shall be done on the roads of the county; report any delinquency or any inefficiency of any road overseer or any other person employed upon such roads to the Board of County Commissioners and perform such other duties as may be prescribed by the said Board."

Section 2951, Revised Codes of Montana, 1907, prohibits the members of the Board from being interested, directly or indirectly, in any contract made by the Board for the opening or improvement of roads, or the building of bridges, or for any other purpose. It is manifest, therefore, that your inquiry must be answered in the negative; for, if any construction be placed upon the law permitting the Board to employ one of its members in this capacity, it would result, not only in such member being interested in a contract respecting road work, but would result in the incongruous situation of permitting such member subsequently to sit in judgment upon his bill for services rendered under such contract, which result would be contrary to both good morals and

public policy.

You propound the further query as to whether county commissioners are entitled at all to remuneration for any services that may be performed by them in connection with road work. Section 12 *idem*, provides as follows:

“The Board of County Commissioners shall, by order, direct the County Surveyor, or both the County Surveyor and some member or members of said Board, or if the County Surveyor is incompetent, appoint a competent engineer in his place, to inspect the condition of any contract construction work on any highway or bridge in the county, before payment therefor.”

Section 13, *idem*, fixes the compensation for making such inspection at the sum of \$8 per day and actual traveling expenses. This the commissioners, so acting, are entitled to receive, because when acting in the capacity indicated by the section above quoted, they are performing a duty enjoined upon them by law, and the question of contractual relationship with the Board does not exist.

Yours very truly,

J. B. POINDEXTER,

Attorney General.