

Highways, Inspection of. County Commissioners, Authority to Inspect Highways.

County Commissioners may charge the per diem and traveling expenses provided for by Sections 12 and 13 of Chapter 3 of Chapter 141, Laws of 1915, only when inspecting the condition of any contract construction work on highways or bridges.

October 9, 1915.

Hon. H. A. Bollinger,
County Attorney,
Bozeman, Montana.

Dear Sir:

I am in receipt of your communication under date the 29th ultimo, relative to the inspection of highways and bridges by county commissioners. You state that you have been unable to determine what law should govern the inspection of roads and bridges, and whether or not, under the present condition of the law, there is any law authorizing the inspection of the condition of a highway or bridge, other than to inspect the condition of any contract construction work on any highway or bridge, by a county commissioner under such circumstances that he should receive pay for the same?"

The authority for the inspection of roads and bridges for which fees may be charged, seems to have been first put into the law of this state by Chapter XLIV of the Laws of 1913, Section 51 of that Chapter reading as follows:

"The Board of County Commissioners may by order direct the county surveyor to inspect the condition of any highway or bridge in the county and the work done thereon *before payment therefor.*"

Section 52 of this same law, allowed the county surveyor seven dollars per day and actual traveling expenses for this work. Chapter XLIV of the Laws of 1903, was an act entitled:

"An act entitled, An Act for the Establishment of a uniform system of Road Government and Administration in the

Counties of the State of Montana, etc.”

It was in effect a general highway law. Section 51 was amended by the next session of the legislature in Chapter 76 of the Laws of 1905, and was made to read as follows:

“The Board of County Commissioners, may by order, direct the county surveyor or any member of said Board, or both the county surveyor and any member of said Board, to inspect the condition of any highway or bridge in the county, and the work done thereon *before payment therefor.*”

And Section 52 was by the same law amended to allow five to the number of the Board doing the inspection. In 1907, this Section was incorporated into the Code as Section 1388. In 1913, the legislature passed Chapter 72 of the laws of that year, entitled:

“An Act to enact a general highway law.”

which law repealed many of the sections of the former highway law, as well as an Act passed in 1909. In Section 1 of Chapter 72, the Act is defined as “The General Highway Law”, the apparent purpose being to make this the law of the state on the question of highways. Nothing is said in Chapter 72 of the Laws of 1913, as to the amendment of any of the preceding law, though numerous sections of the previous law are directly repealed. Chapter 3 of said Chapter 72 deals with the subject of road districts and duties of officers, and Section 12 thereof, reads as follows:

“The Board of County Commissioners shall by order direct the county surveyor or some member or members of said Board, to inspect the condition of any highway or bridge in the county, and the work done thereon *before payment therefor.*”

It will be seen that this is virtually the same provision as was passed in the highway law of 1903, except that the number of Commissioners who may act as such inspectors is increased to any number within the discretion of the Board. The last legislature by Chapter 141, of the Session Laws of the Fourteenth Legislative Assembly, amended Chapter 72 of the Session Laws of 1913, and in this law as amended, we find, under the subject “Road Districts and Duties of Officers,” Section 12, virtually the same language as the enactment of 1913, except the words “to inspect the condition of any contract construction work on any highway or bridge in the county before payment therefor.” In the previous enactments upon the subject, the words “*before payment therefor,*” are. They imply at least a right in the Board of County Commissioners to refuse payment if the work is found by such inspection to be below the standard. It must be assumed therefore, that the work to be inspected and referred to by such enactments was contract work, for any other construction would make the words “before payment therefor,” a mere subterfuge. It could hardly be said that the County Commissioners could refuse to pay men working under their direct supervision for road work, for it is to be presumed that work done under their direct supervision would be up to the specifications demanded by the Commissioners.

I am of the opinion, therefore, that it is only upon this class of work that Commissioners may charge the per diem and traveling expenses provided for by Sections 12 and 13, Chapter 3 of Chapter 141 of the Session Laws of 1915.

Your second question as to who may receive this per diem has in a way been answered by an opinion from this office to Hon. X. K. Stout, County Attorney of Flathead County, under date June 6, 1913, and found in Volume 5, Opinions Attorney General at page 187. The same reasoning would apply here as in that case. It is to be noted, however, that Chapter 141 did not change the per diem for such work from that fixed by the Session Laws of 1913, and since as we have decided above, it is for the same class of duties, persons who are entitled thereto, under the laws of 1913, would be entitled to it here.

Yours very truly,

J. B. POINDEXTER,

Attorney General.