

**County Commissioners, Right to Charge for Inspection of Roads When. Roads, Right of Commissioners to Charge for Inspection of. Highways, Right of Commissioners to Charge for Inspection. Action, Against Commissioners for Illegal Fees. Claims, Approval of by District Judge When.**

Ordinarily before a commissioner may charge for work, he must be vested with authority from the Board. The procedure to be followed in actions against a commissioner for illegal fees are dependent upon the facts of the particular case. The action of the District Judge in approving bills is of no avail, unless he is authorized by statute so to do.

July 6, 1916.

Hon. Stanley E. Felt,  
County Attorney,  
Glendive, Montana.

Dear Sir:

I am in receipt of your letter relating to liability of the county commissioners for money received by them for inspection of roads or travel, and for other expenses or for per diem, as specified in the copies of the bills enclosed with your letter. The specific questions submitted by you are:

"1. Is a county commissioner authorized to make a charge against the county for time spent in looking after county affairs which was done upon his own initiative?

2. What is the period within which an action may be brought in a matter of this sort?

3. Would each bill presented by a commissioner necessitate a separate cause of action?

4. Does the fact that the district judge has approved these bills, or some of them, have an effect upon the situation? Was the judge sitting as a Court or merely as an auditor?"

In your letter of May 15, 1916, you requested a personal interview relative to these matters above referred to, and I have held the answer to your inquiries in abeyance waiting for you to appear.

I will now endeavor to give a general answer to the questions submitted in the order named, but the general nature of the questions involved are such as to render specific answers impossible, for the reason that so many questions of fact may intervene.

1. Ordinarily, and perhaps always, unless a case of necessity arising from some emergency, before a commissioner is authorized to charge the county for time spent in looking after roads or other matters relating to the county welfare, he must have authority, either specific or general, from the law itself, or from some act of the Board. For a commissioner cannot be permitted to act solely upon his own individual initiative in incurring bills against the county in the matter of the inspection of roads. The provisions of Section 12 and 13, Chapter 3, Chapter 141, Laws of 1915, furnish the guide. The law of necessity in emergency cases may, when circumstances justify it, authorize a departure from the strict letter of the law, but otherwise action of the board as a board not as individuals, must be first obtained, and with reference to a matter which under the law is a proper county charge.

2. The statute of limitations must depend largely upon the theory of the case, whether the five year statute, the three year statute, or the two year statute apply. I think the safer course would be to proceed as if the five year statute applied, and the defendants in such a case may interpose their plea of the statute of limitations, and the court can then pass upon it.

3. Each separate bill should be plead as a separate cause of action or count, but all, of course, in the same complaint.

4. The action of the district judge, in approving the bills, is of no moment whatsoever, for he was not acting either as a judge, or as an auditor.

It is quite probable that this matter will find its way into the court, and if it does, the court can then pass upon the merits of the controversy from the facts presented. It is a very difficult matter to determine upon the specific rights of the parties, except in a general way, without a trial and the admission of evidence.

An action somewhat similar to this proposed action was brought in Ravalli County against the county commissioners there by Messrs. Wagner and Taylor, but the case did not find its way to the Supreme Court. Mr. J. D. Taylor of Hamilton, Montana, would probably be able to supply you with a form of the complaint which they used in that case, and which stood the test of attack in the district court.

Yours very truly,

J. B. POINDEXTER,  
Attorney General.