

County Commissioners, Compensation, Inspecting Road Work When. Compensation, County Commissioners Inspecting Road Work. Expenses, Traveling County Commissioners When Allowed. Power, County Commissioners to Employ Road Builder.

A county commissioner is not entitled to compensation for supervising or inspecting road work being done by road supervisors or road crews, or employees hired to work on the roads of the county by the month or day.

County Commissioners are not entitled to traveling expenses while supervising or inspecting work done by road supervisors, or road crews, or employees hired to work on the roads of the county by the month or day.

Where the Board of County Commissioners employs a competent road builder to supervise county roads at not to exceed seven dollars per day, such road builder is not entitled to receive any additional sum to reimburse him for expenses incurred in the discharge of his duty.

July 14, 1916.

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

Dear Sir:

I am in receipt of your letter of the 12th instant, setting forth:

"The Grand Jury is in session in this county and have asked me to obtain an opinion from you as to the law on three questions submitted me as follows:

1. What compensation is a commissioner entitled to while supervising or inspecting road work being done by road supervisors or road crews or employees hired to work on the roads of the county by the month or day—such work not being by contract?

2. Are county commissioners entitled to actual traveling expenses while supervising or inspecting work being done by road supervisors or road crews or employees hired to work on the roads of the county by the month or day, and who are not working under contract?

3. If the county commissioners employ a competent road builder to supervise county roads at \$7.00 per day under Sub-division 10, Section 2, Chapter 141 of the Laws of 1915, would he be entitled to receive any additional sums to reimburse him for expenses incurred while discharging his duties?"

In an opinion addressed to you by this office under date of October 9, 1915, you were advised that the county is liable for claims presented by the county commissioners with regard to road work, only when the services performed have been in pursuance of Sections 12 and 13 of Chapter 3 of Chapter 141, Laws of 1915; that is to say, when a member or members of the Board by direction of the Board, in conjunction with the county surveyor or other competent engineer, inspect the condition of any contract construction work on any highway or bridge in the county before payment therefor. The conclusion reached in the opinion referred to, requires that your first and second questions be answered in the negative.

In your third interrogatory you do not indicate the character of expenses for which compensation is claimed. I assume, however, that it refers to personal expenses, such as mileage, meals and lodging, and if these be the character of expenses to which you refer, the answer to this interrogatory must also be in the negative. Our Supreme Court has frequently held that expenses not imposed by law are not a charge against a county. In a recent case of State v. District Court, 157 Pac. 1157, the authorities are reviewed, and the conclusion reached that one who renders services to the state for work which there is no compensation provided by statute, cannot raise an implied assumpsit against the state, and for such services he has no legal claim; that money can only be drawn from the county treasury in pursuance of statute, and as authorized by law, and any order drawn on the treasury without this authority, is void. The only statutory authority for compensating a road builder is found in paragraph 10, Section 2, Chapter 3, Chapter 141, Laws of 1915, and it is there provided that he shall be paid for his services not to exceed seven dollars per day. No provision is made for expenses, and the conclusion is therefore inevitable that a road builder is not entitled to such.

Yours very truly,

J. B. POINDEXTER,

Attorney General.