

**County Commissioners, Fees of for Inspecting Roads. Fees of County Commissioners for Inspecting Roads. Roads, County Commissioners not Entitled to Fees for Inspecting.**

Opinion of October 9th, 1915, to County Attorney Bollinger, examined and affirmed herein.

July 27, 1916.

Hon. Charles A. Ross,  
County Commissioner,  
Malta, Montana.

Dear Sir:

I am in receipt of your communication under date the 22nd instant wherein you advance some reasons why the opinion of October 9th, 1915, addressed to County Attorney Bollinger, Gallatin County, relating to the fees properly chargeable by county commissioners for road inspection, is not applicable to your county.

You state that Phillips County is a new county and badly in need of roads, and further, that this condition required a great deal of personal attention on the part of the Board of Commissioners in determining whether a certain portion of road or bridge should be constructed. You state further, that you have been charging per diem and mileage for this work. If you will carefully examine Chapter 141 of the Laws of 1915, known as the "General Highway Law", you will find (1) That all highways, roads, lanes or streets, laid out or erected by the public, or now traveled or used by the public, are public highways; that is, all roads which were established at the time of the creation of Phillips County continued to be such until abandoned in accordance with law. Hence, there was and could be no necessity for a determination as to whether such roads should be built; (2) The procedure for laying out new roads is minutely prescribed by Chapter 4 of said Chapter 141. By this provision it is the duty of the Board of County Commissioners to appoint viewers,

whose duty it is to view the proposed road or change of route, and report the course, termini, length and probable cost of construction, the estimated of damages to owners, the names of land owners, the necessity for, or the public convenience to be subserved by the proposed road or change, and whether in their opinion such proposed road should be opened, or such change made; (3) That it is made the duty of the county surveyor when so ordered by the Board of County Commissioners to make estimates as to costs; (4) That the repairs made to roads are to be done by road supervisors in the several districts.

From this, it will be seen that the law does not contemplate the minute and personal supervision of these matters by the Board of County Commissioners, or the several members thereof. In any phase of the road work, their duties are more general, and intended to be those of the determination of policy rather than the direction of the particular phases. The law does not contemplate, nor authorize the charging of fees in these matters by county commissioners. There is no express authority for it, and the implication from the fact that such things are provided for in other ways, as for instance by the provision for the appointment of viewers, and the definitions of the duties of road supervisors, and of the county surveyor, is that it was not intended that these matters should be handled directly by the county commissioners.

Not finding any express authority for such charges and finding on the other hand, a very strong implication that these matters should be handled by other officers, I am of the opinion that such charges cannot be made, I see no reason to alter or amend my opinion of October 9th, 1915.

Yours very truly,  
J. B. POINDEXTER,  
Attorney General.