

County Commissioners—Compensation and Mileage Expenses—Board Of, Settlement—County Attorney, Attendance At—Express.

Compensation allowed county commissioners is \$8.00 per day and mileage.

The compensation allowed the two boards of county commissioners to apportion the indebtedness of respective counties should be a reasonable per diem and expenses, and be apportioned equally between the two counties.

If the county attorney is required to attend meeting of Board of Settlement, he should be allowed actual expenses only.

May 2nd, 1919.

Mr. Wm. L. Bullock,
County Attorney,
Conrad, Montana.

Dear Sir:

I am in receipt of your letter of recent date submitting the following:

1. In the determination of the compensation to be paid the County Commissioners, which section rules, Section 3194 or Section 2893? There seems to be a difference in the mileage.

2. Chapter 22, Laws 1919, creates Pondera County; the Board of County Commissioners of Pondera County are three of the commission designated to make settlement with Chouteau County and with Teton County. What is to be used as a basis of defraying the expenses of the Board of County Commissioners of Pondera County? Are they entitled to \$8.00 per day and mileage, or \$8.00 per day and expenses, or are they to be paid no per diem and only their actual expenses?

3. The County Attorney has been required to attend these meetings; how are his expenses to be cared for?

Answering your first question you are advised that the compensation allowed members of the board of county commissioners is \$8.00 per day and mileage at the rate of ten cents per mile, as provided by Section 2893. Wade vs. Lewis and Clark County, 24 Mont. 338, 61 Pac. 880.

With reference to the answer to your second question it is not entirely free from doubt. Section 12 of Chapter 3 of Chapter 172, Session Laws 1917, provides that members of the board of county commissioners shall

receive \$8.00 per day each, and actual expenses, while inspecting roads, etc., while Section 2893, Revised Codes, provides that each member of the board of county commissioners shall receive \$8.00 per day for each day's attendance on the sessions of the board, and ten cents per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence, and no other compensation must be allowed. There are no other provisions of our statute for the compensation of members of the board of county commissioners, and the act creating Pondera County is silent regarding the compensation to be paid members of the Commission to apportion the indebtedness.

Unquestionably the provisions of Section 12, Chapter 3 of Chapter 172, Session Laws 1917, have no application, as the compensation therein provided is restricted solely to compensation for inspecting roads, etc. And it is doubtful whether the provisions of Section 2893 have any application, for the reason that the per diem there allowed is for attendance on the sessions of the board, and the mileage is for traveling to and from their residences and the county seat, and while the members of the board of county commissioners are made members of the commission to apportion the indebtedness, etc., when acting as members of such commission they are not acting by virtue of any authority vested in them as members of the board of county commissioners, but as members of a separate and distinct commission, a commission to apportion the indebtedness, etc.

Chapter 139, Session Laws 1915, an act providing for the creation and organization of new counties, provides by Section 6 for the appointment by the Governor of a commission of three persons to apportion indebtedness, etc., while Section 8 provides that each member of the commission shall receive a per diem of \$8.00 per day and their actual expenses. Practically the same provisions are contained in Chapter 226, Session Laws 1919, the new county act passed by the last legislature, but these provisions are only applicable when a county has been created in accordance with the provisions of said Act, and Pondera County having been created by legislative action they are not applicable.

I am, therefore, of the opinion that, there being no provision fixing the compensation of members of the commission to apportion the indebtedness, etc., between Pondera and Chouteau and Teton Counties, the members of such commissions are entitled to a reasonable per diem for their services, and also their actual expenses incurred in attending the meetings of the commission, and that it is for the boards of county commissioners of said counties to determine what is a reasonable per diem. I am also of the opinion that these commissions are not acting for any one county, but for all counties, that is, one commission is acting for Pondera and Teton counties, while the other commission is acting for Pondera and Chouteau counties, consequently the total expenses of all members of the commission, including their per diem and expenses, should be apportioned equally between the two counties for which the commission is acting. In other words, instead of Pondera County paying the per diem and expenses of the three members from that county, and Teton or Chouteau County paying the expenses and per diem from such county, the per diem and expenses of all of the members of the Pondera and Teton commission should be paid, one-half by Pondera and one-half by Teton or Chouteau county.

With reference to your third question, I am of the opinion that if the board of county commissioners of Pondera county request the county attorney of that county to attend the meetings of the commissions such county attorney is entitled to his actual expenses incurred in so doing, such expenses to be paid by Pondera County. The County Attorney does not attend the meeting of such commissions as a member thereof, but as a representative of his county before the commission, consequently his county should pay him his actual expenses incurred, but no other compensation.

Respectfully,

S. C. FORD,

Attorney General.