

County Surveyor, Salary.

Where additional duties are imposed upon the county surveyor he is entitled to the increased salary provided for by law to compensate for such additional work.

Oct. 28, 1919.

Mr. Howard G. Bennett,
County Attorney,
Great Falls, Montana.

Dear Sir:

I am in receipt of your letter of recent date asking me to advise you whether or not, under the provisions of Section 12 of Chapter 172, Session Laws 1917, as amended by Chapter 15, Session Laws Extraordinary Session 1919, the county surveyor is entitled to \$8.00 per day for all work

performed by the county surveyor under the direction of the Board of County Commissioners, or whether such compensation is limited to the time spent by such surveyor on inspection work.

Section 12 of Chapter 172, Session Laws 1917, as amended by Chapter 15, Session Laws Extraordinary Session 1919, is as follows:

"The Board of County Commissioners may direct the county surveyor or some member or members of said board to inspect the condition of any proposed highway or highways, or work on any highway or bridge in the county during the progress of the work, and before payment therefor, and such member or members of said board shall receive for making said inspection the sum of eight dollars (\$8.00) per day and actual expenses, and the county surveyor shall receive for making such inspection when directed and for all other work performed for the county under the direction of the Board of County Commissioners, the sum of eight dollars (\$8.00) per day and actual expenses, which shall be audited and allowed in the same manner as any other claims against the county."

The county surveyor is a constitutional officer, his office being created by Section 5 of Article 16 of the Constitution, consequently the prohibition contained in Section 31, Article 5 of the Constitution applies to him, and his compensation cannot be either increased or diminished during his term of office. This does not mean, however, that the legislature may not, at any time, impose additional duties on such office and allow him additional compensation for the performance of such additional duties, for it is entirely within the power of the legislature to do so. (State ex rel. Donyes vs. Board of County Commissioners Granite County, 23 Mont. 250, 58 Pac. 439.)

At the time of the general election in 1918, and on the first Monday in January, 1919, when the county surveyors of the several counties, who were elected in 1918, took office, the duties and compensation of the county surveyor were prescribed and fixed by Sections 3057 and 3172 of the Code and Section 12 of Chapter III of Chapter 172, Session Laws 1917. By Chapter 50, Session Laws 1919, many additional duties were imposed on the county surveyor. Chapter 50, Session Laws 1919, was amended by Chapter 15, Acts Extraordinary Session 1919, but even as amended said Chapter 50, Session Laws 1919, still imposed many additional duties on him. The legislature having imposed these additional duties on the county surveyor, unquestionably it was within its power to increase the compensation of the county surveyor to cover the performance of these additional duties. It, therefore, seems reasonable to assume that having imposed these additional duties on the county surveyor, the legislature intended that his compensation should be increased to cover the performance of these duties.

I am, therefore, of the opinion that the compensation of \$8.00 per day, provided for by Chapter 15, Acts of Extraordinary Session 1919, is not limited to time employed in inspecting highways or bridges under the direction of the Board of County Commissioners but that he is entitled to receive \$8.00 per day for all work performed by the county surveyor under the direction of the Board of County Commissioners.

Respectfully,
S. C. FORD,
Attorney General.