

**Surveyors, County—Duties—Records, Surveys and Plats
—Compensation—Office, Provided.**

Under Chapter 50, Session Laws of 1919, the County Surveyor is ex-officio Highway Engineer, having charge and supervision of highways.

County Surveyor is required to keep all surveys and plats of every kind in his office, and he must be furnished with necessary books and equipment.

County Surveyor is entitled to a per diem of \$7.00 per day, while performing duties prescribed by this Act.

County Commissioners must provide an office for County Surveyor, but are vested with discretion as to the equipment he may require.

April 10th, 1919.

State Highway Commission,
Helena, Montana.

Gentlemen:

I am in receipt of your letter of the 3rd inst., requesting my opinion upon the following questions in connection with House Bill No. 23 of the Sixteenth Legislative Assembly (Chapter 50, Session Laws of 1919). An Act relating to the office of County Surveyors.

“(1) Section Two provides that the County Surveyor shall be ex-officio Highway Engineer for the county in which he resides and shall work under the direction of the Board of County Commissioners, and under their direction and supervision he shall have charge and supervision of all highway construction and maintenance; make all surveys, establish grades, etc. Is this stipulation to be interpreted to mean that the County Surveyor is in charge of all highway construction and maintenance work performed in the county, or is he to be in charge only of such construction and maintenance work as is placed under his supervision by the Board of County Commissioners? In general, is the County Surveyor required to perform those duties specified in the law without authorization from the Board of County Commissioners, or is he required to perform only such duties as are specifically delegated to him by the Board of Commissioners?”

(2) Section Three of the law provides that the County Surveyor shall keep in his office certain books of records and shall keep certain records therein. Are the records of surveys and plats specified confined only to highways and bridge work, or do they include all surveys and plats of whatever nature or kind made by the County Surveyor? Is it mandatory on the part of the Board of County Commissioners to furnish such record books as are specified? Is the County Surveyor entitled to a per diem of \$7.00 while engaged in the performance of duties specified in this Act?

(3) Section Four provides that the County Surveyor shall be provided with suitable office, together with the necessary equipment to perform his various duties as prescribed by law. Is it mandatory on the part of the Boards of County Commissioners of the various counties of the State to immediately provide the County Surveyors with such office and equipment?"

Answering your first question I am of the opinion that by Section Two of such Act it is intended that the County Surveyor, as ex-officio Highway Engineer, shall have charge and supervision of all county highways, the construction and maintenance thereof, and make all surveys, establish all grades, etc., for the same, but all under the immediate direction of the Board of County Commissioners. In other words, it was not intended that he should have charge and supervision of only such construction and maintenance and should make only such surveys and establish such grades, etc., as the Board might from time to time direct, but it was the intention that he should at all times have supervision and direction of all thereof, make all surveys and establish all grades, etc., therefor, always, however, being subject to the direction of the Board of County Commissioners. For instance, he may have charge and supervision of a certain county highway, yet he has no authority to change the same, to construct or repair the same, or to incur any expense in connection therewith, except by direction of the Board of County Commissioners, but when the Board orders the highway, or any portion thereof, constructed, or reconstructed, or repaired, or any expense to be incurred in connection therewith, the County Surveyor has direction and supervision over the same, and it is his duty to see that the work is performed in the manner ordered by the Board.

Answering your second question, I am of the opinion that the records of surveys and plats, which he is required to keep in his office, are not confined to highways, and bridge work, but that they include all surveys and plats of every nature and kind made by him as County Surveyor. By Section 3057 to 3061, inclusive, of the Revised Codes, the County Surveyor is required to make certain surveys and plats when ordered or directed to do so, other than those required for public roads and bridges, and to keep a record of the same, and Section Three of this Act simply imposes on him the same duties with reference thereto as are imposed on him by Section 3957 of the Revised Codes. I am also of the opinion that it is mandatory on the part of the Board of County Commissioners to furnish the County Surveyor with such record books

as may be necessary in order that he may keep the required records in his office, but the Board is vested with discretion as to just what books may be necessary for such purpose and is not required to furnish every book which the County Surveyor may demand but only such books as the Board may deem necessary for such purpose. Section 3172 of the Revised Codes provides that the County Surveyor shall be entitled to \$7.00 a day for making surveys required by the Board of County Commissioners. Section Twelve of Chapter Three of Chapter 172 of the Session Laws of 1917, provides that the County Surveyor shall receive for inspecting the condition of any proposed highway, or highway, or work on any highway or bridge, *and for all other work performed for the county under the direction of the Board of County Commissioners*, the sum of \$7.00 per day and actual expenses which shall be audited and allowed in the same manner as any other claims against the county. They appear to be the only provisions of law for the compensation of a County Surveyor for services rendered to the county, and I am, therefore, of the opinion that the County Surveyor is entitled to a per diem of \$7.00 while actually engaged in the performance of the duties specified in such Act.

Answering your third question I am of the opinion that it is mandatory on the part of the Board of County Commissioners to provide, as soon as possible, an office for the County Surveyor in which he may perform his office work and keep his records, and also to provide him with such equipment as may be necessary for him to have in order to properly perform the duties of his office, but here also the Board is vested with discretion as to just what equipment may be necessary for such purpose and is not required to furnish him with every instrument, appliance or item of equipment which the County Surveyor may demand, but only such as the Board may deem necessary.

Respectfully,

S. C. FORD,

Attorney General.