

**County Commissioners—Refusal to Appoint Road Supervisors—Power to Take Charge of Road Work and Draw Compensation Therefor.**

The Board of County Commissioners may in their discretion refuse to appoint road supervisors and leave the offices vacant.

The members of the Board of County Commissioners are not authorized to take charge of work on public highways and receive compensation therefor.

J. E. Kelly, Esq.,  
County Attorney,  
Boulder, Montana.

My dear Mr. Kelly:

I have your letter in which you inquire:

"1. Can the County Commissioners refuse to appoint road supervisors and leave the offices vacant?"

"2. Can the Board of County Commissioners take charge of the work themselves and draw pay, either as road supervisors or as County Commissioners?"

Chapter III of Chapter 141 of the Laws of the 14th Legislative Assembly, as amended by Chapter 15 of the Laws of the Extraordinary Session of 1919, provides that the County Commissioners "may, in their discretion, keep the county divided into suitable road districts, place each of such road districts in charge of a competent road supervisor and order and direct each of such supervisors concerning the work to be done upon the public highway in his district."

It further provides that the "road supervisors, when appointed, shall serve during the pleasure of the Board of County Commissioners and shall in all things be under the direction and control of said Board."

Under these provisions of the statute, the Board of County Commissioners may refuse to appoint road supervisors and leave the offices vacant, as this is left to the discretion of the Board, and your first question, therefore, in my opinion, should be answered in the affirmative.

With reference to your second question, the provision relating to compensation of County Commissioners for work in connection with public highways is Section 4, Chapter 15 of the Laws of the Extraordinary Session of 1919, which provides 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 \* \* \* ."

The Supreme Court of Montana has had under consideration the compensation that may be allowed to County Commissioners, and in holding that no compensation may be allowed a County Commissioner except such as is specifically authorized by statute, the court in *State ex rel. Payne v. District Court et al.*, 53 Mont. 350, 354, used the following language:

"These fees are legal or illegal depending upon whether they are, or are not, authorized by law. A county commissioner can lawfully collect for services performed in virtue of

his office only such fees or other compensation as the law specifically authorizes. The law authorizes per diem and mileage for attending the meeting of the board (Sec. 2893, Rev. Codes), and per diem and expenses while inspecting contract construction work on a highway or bridge, under a proper order of the board. (Laws 1915, p. 319.)"

Later in the same opinion the court says:

"The accused, acting in his official capacity as county commissioner of Madison county, spent one day seeing about a right of way for which he charged and collected from the county \$8 and \$5 additional for expenses, etc. This item particularly is not comprehended within any provisions of the law authorizing fees or other compensation to a member of the board of county commissioners for services rendered in his office, and is therefore prima facie illegal."

While the section referred to in the foregoing opinion has been amended slightly since the foregoing decision, the rule therein stated applies, and giving it specific application to your question, the conclusion follows that "taking charge of the work themselves, either as supervisors or as county commissioners," is "not comprehended within any provision of the law authorizing fees or other compensation to a member of the board of county commissioners."

To the same effect, and quoting largely from *State ex rel. Payne v. District Court*, supra, is the decision in *State v. Story*, 53 Mont. 573.

It is, therefore, my opinion that the Board of County Commissioners, or its members individually, are not authorized by law to take charge of the work on public highways and draw pay therefor.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.