

Expenses — Fees — Salary—County Commissioners—School Trustees—School Districts.

The chairman of the board of county commissioners is not entitled to any salary or fees when attending meetings of the board of trustees of a rural school district but is entitled to his actual traveling expenses the same as any other member of said board.

James B. Convery, Esq.,

April 28, 1925.

Chairman, Board of County Commissioners,

Silesia, Montana.

My dear Mr. Convery:

You have requested my opinion whether the chairman of the board of county commissioners may be allowed the same fee and mileage for services as an ex-officio member of the board of trustees of a rural school district as is allowed for serving as county commissioner.

Section 1042, R. C. M. 1921, as amended by chapter 178, session laws of 1925, reads in part as follows:

“The chairman of the board of county commissioners, the county superintendent of schools and the county treasurer shall be ex-officio members of the board. No ex-officio member of the board may serve as chairman, nor may such member receive any further remuneration for his services than his regular salary for the other duties of his office.”

Section 4464, R. C. M. 1921, provides as follows:

“Each member of the board of county commissioners is entitled to eight dollars 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.”

No provision is made for payment of fees for services rendered as ex-officio member of the board of trustees of a rural school district, and the supreme court of this state has held that “any moneys collected or

attempted to be collected by a public official from any source whatever, whether mileage, per diem or specific charge for services rendered in his office, without authority of law for such collection, though done in good faith and for efficient service performed for the public, are illegal fees." (See *State vs. Story*, 53 Mont. 573.) Hence since chapter 175, session laws of 1925, provides that no ex-officio member shall receive any further remuneration for his services than his regular salary for the other duties of his office and no fees are allowed by law to the chairman of the board of county commissioners for this kind of service he is not entitled to any pay for attending such meetings.

However, section 1047, R. C. M. 1921, as amended by chapter 68, session laws of 1923, provides in part that each member of the board of trustees of the rural school district shall be paid from the general fund of the county his necessary traveling expenses in attending regular meetings, but not to exceed four special meetings, and an honorarium of seventy-five dollars per year.

Chapter 178, session laws of 1925, supersedes this section and thereby repeals that part dealing with the honorarium or salary as to the ex-officio members but does not supercede or amend the part dealing with the traveling expenses of members of the board.

It is, therefore, my opinion that the chairman of the board of county commissioners, while serving as an ex-officio member of a board of trustees of a rural school district, is not entitled to receive any compensation for said services but is entitled to receive his actual traveling expenses necessary in attending said meeting.

Very truly yours,

L. A. FOOT,

Attorney General.