

**County Commissioners—Fees—Compensation—Per Diem—
Mileage—Expenses.**

Rule stated as to when county commissioners are entitled to per diem mileage and actual expenses.

Frank Woody, Esq.,

January 23, 1926.

Counsel, Montana Taxpayers' Association,
Helena, Montana.

My dear Mr. Woody:

You have requested my opinion in regard to the fees and other compensation which members of boards of county commissioners may lawfully charge and collect from a county. You state the following:

"It has become the settled practice throughout all, or nearly all, of the counties of the state for county commissioners to render services for many different purposes, charging and collecting from the county therefor fees at the rate of \$8.00 per day, and either mileage at the rate of 10 cents per mile or the actual traveling expenses incurred in rendering and performing such services.

"Some, but by no means all, of the purposes for which such services are rendered and fees and mileage, or expenses, charged and collected are as follows:

"1. Attending sessions of the board for which a fee of \$8.00 per day and mileage at the rate of 10 cents per mile are charged and collected.

"2. Inspecting roads and bridges on which work is being done and before payment for such work, or inspecting proposed roads, for which a fee of \$8.00 per day and actual expenses are charged and collected.

"3. One member of the board attends a general meeting of commissioners or assessors, for which a fee of \$8.00 per day and actual expenses are charged and collected.

"4. The chairman of the board, in the absence of the district judge, holds an insanity inquisition for which he charges and collects a fee of \$8.00 per day, and either mileage at the rate of 10 cents per mile, or his actual expenses.

"5. The chairman of the board acts as a member of the jury commission for which he charges and collects a fee of \$8.00 per day, and either mileage at the rate of 10 cents per mile, or his actual expenses.

"6. Making trips from the county seat to Helena to attend a meeting of the state highway commission, or to confer with such commission regarding highway matters, for which a fee of \$8.00 per day and actual expenses are charged.

"7. Making trips from the county seat to Helena to attend hearings before or to confer with the state board of equalization regarding tax matters, for which a fee of \$8.00 per day and actual expenses are charged and collected.

"8. When contemplating the construction of a courthouse, jail, or other county building, to make trips to the county seats of other counties for the purpose of examining and inspecting their county buildings, for which a fee of \$8.00 per day and actual expenses are charged and collected.

"9. When contemplating the purchase of furniture, equipment, machinery, etc., to make trips to other counties to examine and inspect their furniture, equipment, machinery, etc., for which a fee of \$8.00 and actual expenses are charged and collected.

"10. A member of the board of county commissioners makes an investigation for the purpose of ascertaining and determining whether the county should grant relief to a poor or indigent person, charging and collecting for making such investigation a fee of \$8.00 per day and either mileage at the rate of 10 cents per mile, or his actual expenses."

There can be no question that some of these fees are in all respects authorized by law and perfectly legal, but many of them are wholly illegal, there being no law authorizing payment for the same.

As to the fee of \$8.00 per day and mileage for attending sessions of the board, and mileage of 10 cents a mile therefor, payment of such per diem and mileage is specifically authorized by section 4464 R. C. M. 1921, and such fees and per diem are therefore legal.

As to the fee of \$8.00 per day and actual expenses for inspecting work on roads and bridges before payment therefor, and for inspecting proposed highways, payment of such per diem and actual expenses is specifically authorized by section 1632 R. C. M. 1921, and such fees and expenses are therefore legal.

As to the fee of \$8.00 per day and actual expenses of one member of the board attending a general meeting of either commissioners or assessors, payment of such per diem and expenses is specifically authorized by section 443 R. C. M. 1921, as amended by chapter 124, session laws of 1923, and such fees and expenses are therefore legal. The state board of equalization usually calls once each year a general meeting of county assessors at Helena for the purpose of discussing tax laws and tax matters, and it is not unusual for one or more members of the board of county commissioners of each county to attend such meeting. Such meeting is probably a general meeting of assessors, within the meaning of section 443, as amended, for which one member of the board of county commissioners may charge and collect per diem and expenses.

As to the fees and mileage or expenses of the chairman of the board for presiding at insanity inquisitions and for performing duties as a member of the jury commission, such chairman may lawfully collect a per diem of \$8.00 therefor, and, if he resides away from the county seat he

may also charge and collect mileage at the rate of 10 cents per mile. Section 4464 R. C. M. 1921, after providing for a fee of \$8.00 per day and mileage at the rate of 10 cents per mile for attending sessions of the board, further provides that "no other compensation must be allowed," but as sections 1431 and 8896, in express terms, impose upon and require the chairman of the board of county commissioners to perform certain definite and specific duties in connection with insanity inquisitions and as a member of the jury commission, it is hardly reasonable to believe that the legislature intended that he should not receive any compensation whatever for such services.

Section 4607 provides that all claims against the county presented by members of the board for per diem or mileage "or other services rendered by them," shall be verified, etc., and seems to recognize the fact that statutory provisions may specifically require one or more members of the board to perform duties not in any manner connected with sessions of the board for which they are entitled to mileage and per diem under section 4464, and that for performing such duties they shall receive compensation.

It is, therefore, reasonable to believe that the legislature intended, when imposing these specific duties on the chairman of the board, that he should receive compensation for performing the same and that such compensation should be at the same rate as he receives for attending sessions of the board, viz., \$8.00 per day and mileage at the rate of 10 cents per mile. Of course, no member of the board, except the chairman, is authorized to perform such services or to charge and collect such fees and per diem.

As to fees and mileage or expenses of members of the board in making trips to Helena to attend a meeting or confer with the state highway commission, or to attend hearings before or confer with the state board of equalization, or for making trips to other counties for the purpose of examining and inspecting buildings, furniture, equipment, machinery, etc., or for making investigation for the purpose of determining whether the county should grant relief to a poor or indigent person, there are no statutory provisions specifically authorizing the same, or specifically authorizing the charging and collection of either per diem, mileage, or expenses for so doing.

In the case of *Payne v. District Court*, 53 Mont. 350, 165 Pac. 294, and which was approved and affirmed in *State v. Story*, 53 Mont. 573, 165 Pac. 748, our supreme court used the following language:

"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 meetings 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."

Since those decisions were rendered section 443 R. C. M. 1921, has been enacted and then amended by chapter 124, session laws of 1923, so

that we now have statutory provisions specifically authorizing the payment of per diem, and either mileage or expenses, for the following services:

Attending sessions of the board;

Inspecting proposed highways and work on established highways during progress of the work and before payment therefore;

One member attending a general meeting of commissioners or assessors;

To the chairman of the board for attending insanity inquisitions and acting as a member of the jury commission;

And we have no statutory provisions specifically authorizing the charging and collection of either fees, per diem, mileage or expenses by members of the board of county commissioners for any other service or purpose whatever.

It is, therefore, my opinion that members of the board of county commissioners cannot lawfully charge or collect either per diem, mileage, or expenses, for any service or purpose, except for attending meetings of the board, inspecting proposed highways and work on established highways during the progress thereof and before payment for the same, one member attending a general meeting of commissioners or assessors, and the chairman attending insanity inquisitions and acting as a member of the jury commission, and that the charging and collection of fees, per diem, mileage or expenses by members of the board of county commissioners for any other service or purpose is the charging and collection of illegal fees for which such members may be removed from office by proceedings instituted under section 11,702 R. C. M. 1921. (State ex rel. Payne vs. District Court, supra; State vs. Story, supra).

In this connection your attention is directed to the opinion rendered by Attorney General Rankin to W. O. Hutchinson, chairman of the board of county commissioners of Flathead county, and which appears in Vol. 9, opinions of attorney general, page 254.

Very truly yours,

L. A. FOOT,

Attorney General.