

**County Surveyor—Road Builder—Salary—Employment—  
County Commissioners—Expenses.**

A county surveyor may be employed as the county road builder in seventh class counties but must be paid either as surveyor or road builder in the manner provided by statute.

Mr. J. H. McAlear,  
County Attorney,  
Chester, Montana.

March 11, 1931.

My dear Mr. McAlear:

You have requested my opinion on the following questions:

“Is a surveyor in a seventh class county barred from acting as a road builder under chapter 59, laws of 1929 by virtue of the provisions of section 4604, R. C. M. 1921? If so, may he be employed in road construction work as surveyor seasonably at daily or monthly compensation fixed by the county commissioners at some salary other than \$8.00 per day and actual expenses allowed for road inspection?”

In this regard you state as follows:

“At our last general election a county surveyor was elected who is likewise a competent road builder. The commissioners

assumed to appoint him as a road builder under the provisions of section 11 of chapter 59, laws of 1929, at their January meeting, and at a monthly compensation of \$175.00, and by mutual agreement agreed to allow him an additional sum as actual expenses, which sum in all events appears to be less than he will actually expend for such purposes. It is desired to avoid the result reached in Hicks vs. Stillwater County, 84 Mont. 38, at least insofar as mileage is concerned as a county official using his own car is entitled to a mileage of 12½c per mile, and in the instant case that would undoubtedly be a considerable monthly item at that rate. Consequently, it seems best that he be employed daily as a surveyor but in some other capacity."

I agree with you that there is no authorization for the county commissioners to fix a monthly salary and an additional fixed amount for actual expenses either for a person employed as a road builder or as a county surveyor, but such person must be paid in the amount and in the manner fixed by statute.

Paragraph 11 of chapter 59, laws of 1929, provides:

"They may, in their discretion, employ a competent road builder, who shall, in counties of the first class, be the county surveyor, \* \* \*."

When so employed, such person is, of course, employed as a road supervisor and not as a surveyor, and for this reason he would be simply presenting a claim against the county for his own salary and would not come within the prohibition contained in section 4604, and since this act simply makes it mandatory to employ the county surveyor as road builder in counties of the first class and does not prohibit the employment of the county surveyor in that capacity in other class counties I can see no reason why he should not be so employed.

It appears to me that since the surveyor, whether acting as a surveyor or as a road builder, must be paid the amount fixed by statute and that such amount is the same in both instances that it makes very little difference to the county in which capacity he is employed. The county commissioners, however, have the right in allowing his actual expense either as surveyor or road builder, for the operation of his automobile, to fix this amount at less than 12½c per mile but it must be fixed upon a mileage basis. (See volume 11, Opinions of Attorney General, page 37.)

Very truly yours,

L. A. FOOT,

Attorney General.