

Opinion No. 104**County Surveyors — Salary — Mileage and Expenses.**

HELD: The effect of the amendment to Section 1632, R. C. M. 1921, by Chapter 176, Laws of 1929, was to restore to operation all of section 4921 and thus permit the County Surveyor to receive only \$7.00 per day for services rendered under the provision of that section.

The county surveyor is not entitled to expenses or mileage while performing services rendered under this section.

March 8, 1933.

You have requested an opinion from this office regarding the compensation to be paid to the county surveyor of Toole County.

The statutes pertaining to this subject are Sections 4921, 1639, R. C. M., 1921, and Section 1632, R. C. M., 1921, as amended by Chapter 176, Laws of 1929. It will be observed that the words "and for all other work performed for the county under the direction of the board of county commissioners", contained in Section 1632 originally, were omitted in the amendment of 1929 above quoted, although the scope of the statutes was otherwise enlarged.

In the case of *Hicks v. Stillwater County*, 84 Mont. 38, 274 Pac. 296, de-

ceded January 26, 1929, while the legislature was in session, it was held that the inclusion in Section 1632 of the words which were omitted in Chapter 176, Laws of 1929, by implication amended Section 4921 insofar as it applied to surveys made for the county by order of the board of county commissioners and in that case the county surveyor was permitted to recover an additional \$1.00 per day for 1396½ days. This decision sustained the rulings of the Attorney General previously made, and found in Volume 8, Page 282 and Volume 9, Page 203 Opinions of the Attorney General.

Since the legislature in 1929 amended Section 1632 by omitting the words above quoted, which by implication amended Section 4921, the question arises whether or not that portion of the latter section which was amended by implication has been revived.

Section 96, R. C. M. 1921, provides: "No act or part of an act, repealed by another act of the legislative assembly, is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act". It has been held, however, that such a statute does not apply to certain cases. The rule is stated in 59 C. J. 942, Section 557, as follows: "However, it applies only to cases of absolute repeal, and not to cases where the original act has been merely suspended, amended, supplemented, or modified, or exceptions thereto have been created". (See Notes 5 to 10, inclusive, for authorities cited"). The rule is also stated in Annotated Cases 1918B, page 284: "A statute abrogating the common-law rule as to the revival of an act by the repeal of the repealing act, has no application where the effect of an act is not to abrogate entirely a former act but merely to withdraw from the operation of the earlier act a portion of the cases included within its terms, leaving the earlier act still in force except as to the cases specifically provided for by the later one. Under such circumstances the repeal of the later act has the effect of again bringing the cases provided for by it within the operation of the original act." Citing cases in support thereof. This principle was recognized by Attorney General Foot in his opinion in Volume 11,

Opinions of the Attorney General, page 182, wherein authorities are cited and the rule applied to the question under consideration by him in that case.

It is my opinion therefore that the effect of the amendment to Section 1632, R. C. M. 1921, as amended by Chapter 176, Laws of 1929, was to restore to operation all of Section 4921 and thus permit the county surveyor to receive only \$7.00 per day for services rendered under the provisions of that section.

It is my opinion further that the county surveyor is not entitled to expenses or mileage while performing services rendered under this section as no expenses or mileage are expressly provided for therein. *Wade v. Lewis and Clark County*, 24 Mont. 335, 61 Pac. 879; *Wight v. Board of County Commissioners*, 16 Mont. 479, 41 Pac. 271.