

**Opinion No. 12****County Surveyors—Salaries—Funds.**

HELD: The fact that the legislative assembly, by inadvertance, provided that the county surveyor should be paid from a fund which had been previously abolished does not alter the fact that he is entitled to compensation as provided by statute.

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January 10, 1933.

Replying to your request for an opinion, the old law in regard to controlling the compensation of county surveyors, was on a per diem basis. As advised by you, the legislative assembly of 1925 abolished the contingent fund. In the 1931 session the compensation of county surveyors in counties with a registered vote of 15,000 was fixed at \$3600.00 payable out of the contingent fund.

Undoubtedly as you state, the assembly meant to have the salary paid out of the general fund owing to the fact that the contingent fund had been abolished.

Chapter 179, Laws of 1931, fixed the county surveyor's salary in counties where the registered vote is 15,000, or more, at \$3600.00. If it had not been specified what fund the salary of the county surveyor is payable out of, such county surveyor would have had an action against the county for compensa-

tion for services rendered and it is discretionary with the commissioners to pay it out of the general fund or any other fund that they might choose. The fact that the surveyor should be paid and that fund has been previously abolished, does not alter the fact that he is entitled to compensation as provided by statute, and the position of this office is that the county surveyor of Cascade County is entitled to his salary of \$3600.00 per year.