

**Opinion No. 54****County Commissioners—Per Diem—  
Poor Relief.**

HELD: A county commissioner is not entitled to more than his statutory per diem for services rendered for administering the county poor relief fund, even though he has been designated by the board to do so and the work requires practically all of his time or six days a week.

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January 30, 1933.

You have submitted to this office the question of whether you are entitled to pay for administering the poor relief where you have been designated by the other members of the board to do so and the work requires practically all your time. You state that Missoula County is now a fifth class county. Under this classification the commissioners are authorized to meet for one three days' session the first of each month and other two day sessions when necessary and proper notice is given. Your county has established a county fuel yard and county commissary which have resulted in material sav-

ings to the county poor farm. There are some 2400 people in the county receiving aid from this source. Supervising this work takes full time or six days a week. You wish to know whether you can be paid for the additional time when the board is not in session.

Section 4521 Revised Codes of Montana of 1921 provides: "The Board of County Commissioners are vested with entire and exclusive superintendence of the poor."

In the case of **Jones v. Cooney**, 81 Mont. 340, 263 Pac. 429, our Supreme Court had under consideration the various statutory enactments relative to the manner of caring for the poor. After viewing these statutory provisions and the history of this legislation the court said: "The policy of the legislature as disclosed by the enactments referred to has been to repose discretion in the commissioners respecting the care of the sick, poor and infirm. Nowhere do we find any positive direction respecting that matter." And again: "It is plain that supervisory and regulatory powers in the matter are reposed in the commissioners. They are given wide latitude with respect to rules and regulations authorized by statute." And further: "When the character of the legislation enacted by territory and state with relation to the care of the poor is considered and analyzed as a whole one is led inevitably to the conclusion that it has been and is the policy of the law making body to repose in the county commissioners a wide discretion in the care of the indigent, poor, sick and infirm of their respective counties."

It is a general rule that whenever a power is conferred upon the board of county commissioners but the mode in which the authority is to be exercised is not indicated the board in its discretion may select any proper mode or course of procedure. **Fisher v. Stillwater County**, 81 Mont. 31, 261 Pac. 607. Section 4531 provides: "Any person seeking relief must make application to any member of the board, who, before granting an order for relief, must require satisfactory evidence that he has been a resident of the county for two months immediately preceding the day upon which the application is made."

While these general provisions for the care of the poor as construed by our court are very broad and are ample to authorize any method of doing the work even to the extent of designating one member to look after all cases, still that is not sufficient to satisfy you for your question is whether you can draw pay at the per diem rate fixed by law for each day you are occupied, where the board is not in session, and it is admitted that the amount of work is sufficient to occupy all your time for six days each week.

In the cases of **State v. Story**, 53 Mont. 573, and **State ex rel. Paine v. District Court**, 53 Mont. 350, our Supreme Court announced the rule that unless the statute authorizes payment for services required to be rendered by a public official none can be lawfully made. I find no provision of law authorizing payment for days when the board is not convened as such. You are therefore advised accordingly.