

Opinion No. 638**Officers—Labor, Hours of—Per Diem,
Defined—County Surveyor
—Vacation—Overtime.**

HELD: There is no law which fixes the hours of employment of county and state officers at eight hours per day, nor is per diem defined as eight hours per day.

A county surveyor is not entitled to compensation from the county when he is not working for the county.

A county surveyor is not entitled to compensation for over-time work in the absence of a statute permitting it, and therefore may not apply over-time work so as to receive a vacation with pay.

November 1, 1934.

This office has received a letter from your county surveyor relative to pay during a vacation. In my letter to you dated September 26, 1934, I did not express an opinion on this question but merely agreed with you that Sections 3079 and 3080 R. C. M. 1921 as amended by Chapter 116, Laws of 1929, do not apply to the hours of labor of elective officers. Mr. Noyes, however, seems to have construed my letter as an opinion that he should be allowed a vacation with pay where he has worked over-time in lieu of the time when he was on a vacation, and has also raised the question whether he is not entitled to pay for over-time whenever he works more than eight hours per day. I did not express an opinion in my former letter on the specific question whether Mr. Noyes is entitled to pay for over-time to make up for the time when he was away on a vacation. After consideration and a comparison with the question passed on in Opinion No. 398, this volume, I am inclined to the opinion that a county surveyor does not stand in the same position as a clerk or other employee whose position, as well as salary, is created and determined by the county commissioners.

In that opinion we held that the county commissioners, as part of the contract of employment of clerks and employees, might provide for a reason-

able vacation. A county surveyor, however, is elected by the people and his compensation per diem is fixed by statute. He is entitled to compensation only when he works. We know of no law which fixes the hours of employment of county and state officers as eight hours per day. It is a well known fact that many of them work more than eight hours per day. This also applies to officers, state and county, who are paid on a per diem basis. Nor do we know of any law which defines per diem as eight hours. It is well known that such officers as county commissioners and legislators sometimes work less and sometimes more than eight hours per day and they nevertheless are entitled to their per diem pay and no more.

Since a county surveyor is an elective officer and is paid a statutory fee only for the days he works and is free to accept other employment when not working for the county and the statute does not limit the work per diem to eight hours, it is my opinion that he may not charge for over-time any more than any other county officer may charge for over-time. To permit officers throughout the state, paid on the per diem basis, to charge for over-time work, might result in many abuses.

It is my opinion, therefore, that a county surveyor is not entitled to compensation from the county when he is not working for the county; that he is not entitled to compensation for over-time in the absence of a statute permitting it and that therefore he may not apply over-time work when he is away on a vacation and not working for the county.