

No. 274

**COUNTY COMMISSIONERS—PUBLIC OFFICERS—
MILEAGE—OFFICES and OFFICERS**

Held: County Commissioners, or other public officers, are not entitled to charge mileage, traveling expenses or per diem when attending any convention or meeting other than such as are specified in Section 443, Revised Codes of Montana, 1935 (or when traveling to the State Capitol for consultation with any state officer, board or department).

October 20, 1941.

Mr. W. A. Brown
State Examiner
Capitol Building
Helena, Montana

Dear Mr. Brown:

I have your request for an opinion on the following question:

"Are county commissioners entitled to receive fees, such as per diem, traveling expenses or mileage, for attending 'Montana Conference of Social Work' or other meetings or conventions, except the meeting or convention provided by Section 443, and also for trips to Helena for the purpose of calling upon the State Highway Department, Welfare Department or any other office, board or commission?"

There are some well-defined principles of law with relation to claims for compensation, fees or mileage by county officials. Our Supreme Court has many times adopted these principles as applicable under specified provisions of our statutes. A few of these principles we quote:

"A public official can only demand such compensation as the law has fixed and authorized for the performance of his official duties."

McGillic v. Corby, 95 Pac. 1063, 37 Mont. 249;

Peterson v. City of Butte, 120 Pac. 483, 44 Mont. 401.

"When a public officer claims compensation for the performance of duties appertaining to his office, either by way of fees or salary, he must be able to support his claim by pointing to some provision of law authorizing him to demand it."

Peterson v. City of Butte, *supra*.

"Where the statute makes no provision for expenses, none may be allowed."

Wight v. Board of County Commissioners, 16 Mont. 479, 41 Pac. 271;

State ex rel. Rowe v. Dist. Court, 44 Mont. 318, 119 Pac. 1103.

"A county commissioner can lawfully collect for services performed in virtue of his office only such fees or other compensation as the law specifically authorizes."

State ex rel. Payne v. Dist. Court, et al, 53 Mont. 350, 354, 165 Pac. 294.

We must therefore look to some statute authorizing the county commissioner to collect mileage, fees or salary for the specific duty or service performed, in this instance attending certain meetings you have specified.

Section 4464, Revised Codes of Montana, 1935, provides each member of the board of county commissioners is entitled to eight dollars per day for each day's attendance on the sessions of the board and mileage in going to and returning from the county seat and his place of residence, and then provides "and no other compensation must be allowed."

Section 1632, Revised Codes of Montana, 1935, provides the board may direct the county surveyor or some member or members of the board to inspect certain road construction work, and such person may be paid eight dollars per day and actual expenses.

Section 443, Revised Codes of Montana, 1935, provides in part as follows:

"Hereafter no state, county, city or school district officer or employee of the state, or of any county or city or of any school district, shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers, save and except for attendance upon such convention, meeting or other public gatherings as said officer may by virtue of his office be required by law to attend . . ."

This section then specifically provides one member of the board may be allowed actual transportation expenses and per diem for attendance upon any general meeting of county commissioners or assessors held within the state not oftener than once a year.

We are unable to find any other provisions of the statutes dealing with this subject, and particularly are we unable to find any statute specifically authorizing the board or any of its members to receive from public funds mileage, traveling expenses or per diem for attendance upon such meetings as you mention. In fact, we think the language of Section 443, *supra*, specifically prohibits such expenditures under the well recognized rule of "*Expressio unius est exclusio ulterius*." In this section the legislature, after providing no state, county or school district officer may charge expenses, fees, etc., for meetings other than specifically mentioned, recognizing that in some instances it may be necessary for certain officers to travel in the interest of the state, specifically provided that "nothing herein

shall prohibit the state board of examiners from authorizing the payment of the necessary traveling expenses of any state officer or employee, whenever in the judgment of the board an emergency exists, and the public interest demands . . ." The legislature did not see fit to authorize county commissioners or other county or city officials traveling expenses in emergency cases.

Since there is no statutory authority for expenditure from county funds for traveling expenses in attending meetings other than those specifically mentioned in Section 443, supra, none may be expended. It may, however, well be contended that instances may arise where it is necessary and for the best interests of the county that some member of the board or some other officer shall attend some meeting or gathering, or consult with some state board or department. However, our Supreme Court in the case of Franzke v. Fergus County, 76 Mont. 150, 156, 245 Pac. 962, said:

"The fact that the contemplated action may be in the best interests of the county is not an admissible argument. The doctrine of expediency does not enter into constructions of statutes."

I am well aware of the fact that, because of the numerous important duties placed upon the county commissioners by law since the adoption of the section herein referred to, and specifically the Public Welfare Act, it is necessary and for the best interests of the several counties that the Board or some of its members, as well as other county officers, such as the county clerk, consult with the State Board of Public Welfare, or with other departments of state, and in doing so it would seem only just and equitable they be allowed traveling expenses. However, in view of these statutes, and the construction placed upon them by our Supreme Court, this is a matter to be called to the attention of the Legislature. This office may only interpret the law as it finds it.

It is therefore my opinion county commissioners or other public officers are not entitled to charge mileage, traveling expenses or per diem when traveling to the State Capitol for consultation with any state officer, board or department or when attending any convention or meeting other than such as are specified in Section 443, Revised Codes of Montana, 1935.

Sincerely yours,

JOHN W. BONNER
Attorney General