

No. 59

**COUNTY SURVEYOR, Records of—COUNTY SURVEYOR,
Compensation and Fees of**

Held: County Commissioners may not limit time spent by County Surveyor on permanent records pursuant to Section 4837, Revised Codes of Montana, 1935, and County Surveyor is entitled to compensation at the rate of \$7.00 per day for such work.

March 25, 1941.

Mr. D. J. Sias
County Attorney
Blaine County
Chinook, Montana

Dear Mr. Sias:

You request a ruling as to whether the Board of County Commissioners may limit the time which the County Surveyor may devote to work on records of surveys and plats.

Section 4836 of the Revised Codes of Montana, 1935, provides:

"4836. County Surveyor to work under direction of County Commissioners—approval of Commissioners required to contract indebtedness—duties of County Surveyor. The County Surveyor shall work under the direction of the Board of County Commissioners, but shall have no power or authority to incur any indebtedness on the part of the county without the order or approval of the Board of County Commissioners being first obtained therefor; he shall make all surveys, establish all grades, prepare plans, specifications and estimates; he shall report any delinquency or inefficiency of any road overseer or other person employed upon the roads within his county; he shall, from time to time, make progress reports and estimates of all work, and such other facts in relation thereto as may be required by the State Highway Commission, Board of County Commissioners, or both."

Section 4837 is as follows:

"4837. Records of surveys and plats, etc. The County Surveyor shall keep in his office a record of all surveys and plats made or caused to be made by him, to be recorded in proper books provided for that purpose; and shall also keep on file and for record, in suitable plat books provided therefor, copies of all plats made or caused to be made by him, and have recorded therein a description of every public highway within the county; provided, further, that all such books of record, together with original drawings and original book or books of field notes, calculations, and computations shall be, are, and shall remain the property of the county, and preserved as such."

The duties prescribed by Section 4837 are mandatory. (Vol. 9, Report and Opinions of the Attorney General, p. 502.) A contrary conclusion would lead to a hopeless accumulation of unrecorded and unfiled plats and field notes in the absence of authority granted by the Board of County Commissioners to perform the duties prescribed by Section 4837. We think Section 4837 provides for a permanent record of plats, field notes, calculations and computations for the benefit of the county. Authority granted the Surveyor to do the field work carries with it authority to file and record such instruments.

Section 4921 of the Revised Codes of Montana, 1935, fixes the compensation of the County Surveyor at \$7.00 per day "for services in making a survey . . . made for the county by order of the Board of County Commissioners."

When services in making the survey are rendered to a county, such services are not complete until the Surveyor performs the duties prescribed in Section 4837, and the County Surveyor is entitled to compensation at the rate of \$7.00 per day while engaged in the performance of this work.

We agree with you in your opinion that the Board of County Commissioners may not limit the time which the County Surveyor may devote to making the permanent records of his office provided for by Section 4837, in the absence of a showing that the time so devoted is unreasonable in length for the performance of such work.

Sincerely yours,

JOHN W. BONNER
Attorney General