

Opinion No. 237

**County Commissioners — Salary of
County Commissioners—Vacations
With Pay—Officers and Employees
of County.**

Held: County commissioners are not entitled to vacations with pay, but their compensation is limited and fixed within the strict confines of Section 4464, Revised Codes of Montana, 1935, as amended by Chapter 176, Laws of 1939.

August 8, 1944.

Mr. H. R. Eickemeyer
County Attorney
Cascade County
Great Falls, Montana

Dear Mr. Eickemeyer:

You have requested an opinion of this office inquiring if county commissioners are entitled to vacations with pay.

As mentioned in your communication, Chapter 176, Laws of 1939, plainly and unambiguously states the compensation of members of boards of county commissioners. Said Chapter 176 amends Section 4464, Revised Codes of Montana, 1935, which statute pertains specifically to the compensation allowed to county commissioners, and specifically states as follows:

“Compensation of Members of Board. 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 seven cents per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence, and no other compensation must be allowed."

The above statute does not contemplate payment to commissioners other than for days in actual attendance at board meetings. The office of county commissioner is distinctly different from any of the other county officers, which officers are paid a regular monthly salary. With the other officers the law contemplates there will be certain work to do at all times which may be done in the absence of any particular officer by his deputies or assistants and the officer himself is responsible for getting the work done but need not necessarily do the same himself. Thus, this office has heretofore held that such officers may take an annual leave with pay if the same is taken without disrupting or neglecting the duties of the office or causing the county additional expense. (See Opinion No. 398, Volume 15, Opinion No. 220, Volume 19, Report and Official Opinions of Attorney General.)

In Opinion No. 225, Volume 20, this office held that per diem workmen might be allowed a leave of absence with pay. This latter opinion was based on the fact such leave might be considered additional pay for services rendered and that the statute does not set any particular wage for county day employees. Further, it is to be considered that mere county employees are hired on contract and the commissioners may contract for such employees on such basis as may seem in the best interests of the county. County commissioners are not hired, they are elected; they do not work under contract, but are paid as designated by statute. They have no particular routine work which may be done in their absence, as the majority of their work has to do with the using of discretion by the board and thus cannot be delegated to employees or clerks. They have no authority other than when convened in regular board meetings. Thus, it is plain to see that the office of county commissioner differs greatly from other county offices and is entirely

different from mere county employment.

Chapter 176, Laws of 1939, specifically provides for payment of eight dollars per day for days in actual attendance at sessions of the board and gives mileage for trips to and from residence to the county seat to attend such sessions and specifically limits the compensation of such commissioners to such per diem and mileage. (See in this respect 1 A. L. R. 387.)

In regard to the difference between county officers and mere employees see 43 Am. Jur. 164, 165, as follows:

"It is necessary to have in view the nature of a public office, and not to lose sight of the fact that an office is usually not regarded as a contract or as a vested property right."

Therefore, it is my opinion county commissioners are not entitled to vacations with pay, but their compensation is limited and fixed within the strict confines of Section 4464, Revised Codes of Montana, 1935, as amended by Chapter 176, Laws of 1939.

Sincerely yours,
R. V. BOTTOMLY
Attorney General