

VOLUME 31

Opinion No. 11

**COUNTY COMMISSIONERS; Expenses, highway inspection—
COUNTY SURVEYORS; Expenses, highway inspection—
Section 32-314, R.C.M. 1947—Section 32-2805, R.C.M.
1947—Article V, Section 31, Montana
Constitution.**

- HELD:** 1. Section 32-314, R.C.M. 1947, as amended by Chapter 260, Laws of 1965, is effective until December 31, 1966, on which date it is repealed.
2. The increased per diem for highway inspection provided by Chapter 260, Laws of 1965, may not be paid county commissioners and surveyors who took office prior to March 9, 1965.

December 16, 1965

Mr. Oscar Hendrickson
Blaine County Attorney
Chinook, Montana

Dear Mr. Hendrickson:

You have requested my opinion on the amount of per diem to be paid county surveyors or county commissioners when inspecting highways.

Your problem arises out of the following facts: Section 2 of Chapter 260, Laws of Montana, 1965, approved March 9, 1965, and effective July 1, 1965, amended Section 32-314, R.C.M. 1947, by increasing the per diem to be paid county surveyors or commissioners when inspecting highways from fifteen dollars a day to twenty dollars. Chapter 197, Laws of Montana, 1965, which will not become effective until December 31, 1966 (Section 12-111) repeals Section 32-314 (Section 12-109), and establishes a per diem of fifteen dollars per day for county surveyors or commissioners when said officers are inspecting highways and highway construction. (Section 5-105.)

It is thus clear that Section 32-314, R.C.M. 1947, as amended by Chapter 260, Laws of 1965, is valid and effective until December 31 1966, when, by the terms of Chapter 197, Laws of 1965, Section 32-314 is repealed and Section 5-105 of Chapter 197 (Codified as Section 32-2805, R.C.M. 1947,) will become effective. I so hold.

However, it should be pointed out that the increase in per diem provided by Chapter 260 may not be paid county surveyors or commissioners who took office prior to the enactment of that statute. In 25 Opinions of the Attorney General 97 (Op. No. 55) this office held that the per diem allowed by section 32-314, R.C.M. 1947, is an emolument within the meaning of Article V, Section 31 of the Montana Constitution and therefore any increase in said per diem may not be granted to officers elected prior to the enactment of said increase during the remainder of their term.

It is therefore my opinion that:

1. Section 32-314, R.C.M. 1947, as amended by Chapter 260, Laws of 1965, is effective until December 31, 1966, on which date it is repealed.
2. The increased per diem for highway inspection provided by Chapter 260, Laws of 1965, may not be paid county commissioners and surveyors who took office prior to March 9, 1965.

Very truly yours,

FORREST H. ANDERSON
Attorney General

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