

Opinion No. 15-1584

July 15, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Hon. K. K. Scott, Roswell, N. M.

As to compensation to be paid county surveyors.

OPINION

{*158} I have just received your letter of the 13th inst. with which you enclose a letter to you from Mr. Nymeyer, County Surveyor of Eddy County, dated July 1, 1915, in which is embodied copy of a letter from him to me dated June 22nd. You also enclose copies of extracts from two letters of the State Superintendent of Public Instruction, one of May 26, 1915, and another without date, and also a copy of proceedings of the county commissioners with regard to the county surveyor, all of which I return herewith as requested by you.

I understand that the matters to which Mr. Nymeyer refers are not as to the settlement with him for the time since the organization of the state government under Section 9 of Chapter 12 of the Laws of 1915, but as to the method to be pursued for future work, and especially as to the work of surveying school districts which appears to be imperatively required by the earlier statutes, particularly in the case of districts where it is proposed to issue bonds or levy any special tax. Section 1545 of the Compiled Laws of 1897 absolutely prohibits the issuance of any bonds or the levying of any special tax by a district until the boundary shall have been established and properly marked by monuments or natural objects, and Section 23 of Chapter 97 of the Laws of 1907 seems to impose upon the county surveyor the positive duty of locating boundary lines and corners of all school districts when requested by the county superintendent, the expense to be charged to the county and to be allowed by the county board, but not to exceed \$ 50 per school district. The question which appears now to be suggested is as to whether, under Chapter 12 of the Laws of 1915, a county surveyor can receive pay for any work except for days actually employed under orders by the board of county commissioners, such employment not to exceed a fixed number of days in the year, varying with counties of the different classes from fifty to one hundred and fifty days per annum.

My recollection is that with the possible exception of the survey of school districts, the practice has been for the surveyor to do only such work as the county commissioners might direct, and I have known a number of county surveyors who never did anything. I cannot avoid the conclusion that the new statute intended to put the control of the surveyors' work in the hands of the county commissioners and not leave it to his discretion as to what particular {*159} pieces of work he should do, and that this new statute fixes all of the compensation which the surveyor can receive from the county. If

this is not so, then it would be possible for a county surveyor, acting independently, to use up all of his days and compensation upon work which, in the judgment of the county commissioners, would not be as important as other work which should be done. I can understand that a properly qualified expert who is a county surveyor naturally feels that he is better capable of judging what ought or ought not to be done than county commissioners who have not been trained in his special line of work, but I believe that the law puts him under the orders of the county commissioners.