

Opinion No. 15-1661

October 25, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. A. W. Hockenull, Assistant District Attorney, Clovis, N. M.

Per diem of county surveyors.

OPINION

{*234} I have received your letter of the 22nd inst. asking for my opinion relative to the legal charges of a county surveyor under the existing law. You say that the County Road Board desires to know, after the surveyor has been employed seventy-five days under orders by the Board of County Commissioners, whether he is permitted, under the law for the same year, to charge for additional work rendered under orders of the road board.

My opinion is that in counties of the third class, under the provisions of Section 2 of Chapter 12 of the Laws of 1915, county surveyors, as such, are limited to a compensation of \$ 750 per annum. That section provides that in those counties the county surveyor shall have not to exceed \$ 10 per day for each day actually employed under orders by the Board of County Commissioners, and that such employment shall not exceed seventy-five days per annum. When this is taken in connection with Section 1 of Article X of the constitution, which provides that no county officer shall receive to his own use any fees or emoluments other than the annual salary provided by law, it clearly prohibits the county surveyor from receiving for official work as such surveyor, anything beyond the \$ 750.

It is obvious, however, that the person who happens to be county surveyor will have during the year, something like two hundred and twenty-five other working days beyond the seventy-five for which the county will pay him for official work, and he must be at liberty to use that time in any employment which he can secure.

Each of the county road boards created by Chapter 54 of the Laws of 1912, by Section 8 of that act which reappears as Section 2648 of the new codification, is empowered and directed to employ the county surveyor to prepare a map to be filed with the State Highway Commission and with the county clerk, and I believe that is the only provision in that statute as to any connection between the county road board and the surveyor. The next section, however, empowers the county road board to employ such engineers, foremen, laborers and other employes as may be necessary. Under this section it would seem that the county road board might employ engineers and surveyors to do work which might be necessary outside of the official work done by the county surveyor by orders of the county commissioners. I do not overlook the provisions of Section 1297 which are to the effect that all county surveys, engineering on roads and bridges, shall

be performed by the county surveyor. Under the law as it stood at the time of the enactment of that section, there was no limit to the amount of time during which the county surveyor might be employed, but it was provided by Section 1298 that he should be allowed \$ 5.00 per day and expenses for any work done for the county, which made it possible {*235} for a surveyor to earn approximately for his own personal services, something like \$ 1,500 per annum, payable by the county, and this section can no longer be considered as applicable when the per diem is increased and the possible earnings reduced to about one-half.

With the general authority given to the road board to employ all persons necessary to carry on the work, I can see no reason why it should not employ any necessary surveyors for that work, and the fact that a desirable surveyor happens at the same time to hold the office of county surveyor, ought not to preclude him from being so employed. I believe that the county road board might employ any other necessary surveyor, but if it should employ the person who is county surveyor, that employment must be the same as though he were not county surveyor. I think there can be no doubt that for any official work as county surveyor, his compensation must be restricted to that which is fixed in Chapter 12 of the Laws of 1915, but he must be allowed to do other work outside of that which he is called upon to perform officially.