

Opinion No. 16-1831

June 17, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. A. R. Moses, County Surveyor, Tucumcari, New Mexico.

Compensation of county surveyor for surveying a school district.

OPINION

{*393} I have received your letter of the 15th instant relative to the survey of a school district made at the direction of the county superintendent, and you ask my opinion on account of a misunderstanding in regard to the compensation for the work. You say that the superintendent tells you that the law provides that the compensation for this work is confined to \$ 50.00. Others say that the services of the county surveyor shall be paid for at the rate of \$ 10.00 per day.

By Section 1 of Article X of the Constitution it was provided that the legislature should classify the counties and fix salaries for all county officers, and that no county officer should receive to his own use any fees or emoluments other than the annual salary provided by law. Pursuant to this requirement, the legislature, by Chapter 12 of the Laws of 1915, fixed the salaries for county officers for counties of the different classes, and in each case fixed the compensation of county surveyors at \$ 10.00 per day for each day actually employed under orders by the board of county commissioners, but in counties of the first, second and third classes, limited the employment to not more than 150 days per annum. Under the constitutional provision this must be taken as exclusive of any other compensation to the surveyor, and it is evident that the work must be done under orders of the county commissioners.

Section 4842 of the Codification of 1915 is the one which makes it the duty of the county surveyor, at the request of the county superintendent, to locate the boundary lines and corners of all school districts, and to prepare a map showing the districts, and that the expenses of such proceedings shall be charged to the county, and shall be allowed by the board of county commissioners, but not to exceed \$ 50.00 for each school district. I am of opinion that this must be construed with the provisions in the salary bill of last year, which, being a later piece of legislation, would prevail over the other where there is any conflict. Any work done by the surveyor under the new law must be by direction of the county commissioners, but where a district has been surveyed at the request of the county superintendent, the county commissioners ought to {*394} ratify that action so that it would be as effectual as though they had originally authorized the work. You will notice that the expenses of surveying a district is made a county expense payable out of the general funds of the county, and I believe that in some cases where the \$ 50.00 would not pay for the survey, some additional amount

has been paid from the school district fund. I am clear, however, that the rate of \$ 10.00 per day must be applied to all official work of the county surveyor.

It has been my view that the \$ 10.00 per day was intended as compensation for the surveyor's services, and that additional expenses for assistants and transportation would be in addition to that amount, but I am informed that the Judge of the Second District, at Albuquerque, has taken a different view and has decided that the \$ 10.00 must cover, not only the compensation of the surveyor, but all other expenses. I hope that the surveyor will appeal the case to the Supreme Court so that we may have a definite adjudication which will be binding all over the state. I must say that it seems to me that it will be very difficult, if not impossible, to get any competent surveyor to work for \$ 10.00 a day and pay all of his own expenses out of that amount. In some instances, where the extra expenses are small, he might be able to do it, but in a country as large as New Mexico, and most of the counties therein, I do not see how he can possibly work for that amount.