

Opinion No. 17-2034

July 30, 1917

BY: HARRY L. PATTON, Attorney General

TO: Hon. F. A. Cooke, County Surveyor, Clovis, New Mexico.

County Surveyor Cannot Receive More Than Fifty Dollars for Locating Boundaries of a School District.

OPINION

I am in receipt of your letter in which you ask advice relative to the payment of your claim, in the light of the two statutes herein referred to. You say that you were employed to survey an unusually large school district, and that the work took nine and one-fourth days of your time as County Surveyor.

Chapter 12, Laws 1915, same being the County Salary Act, provides for the payment of \$ 10.00 per day to county surveyors for each day actually employed under the orders of the Board of County Commissioners. The number of days for which he may be employed under said Act ranges from fifty in counties of the fifth class to one hundred fifty in counties of the first class. In other words, his salary ranges from \$ 500.00 in counties of the fifth class to \$ 1,500.00 in counties of the first class.

You call attention to the provisions of Section 4842, Codification of 1915, which provides for the location of boundaries of school districts by the county surveyor. The section also contains the following provision:

"The expense of such proceeding shall be charged to the county wherein the school district is situated and be allowed by the Board of County Commissioners at the discretion of said Board, not to exceed fifty (\$ 50.00) dollars a school district."

As before stated, this is a section of the Codification and is a part of the Act of 1907. You suggest that, inasmuch as the Salary Law is a subsequent Act, it repeals this part of Section 4842. I cannot agree with you in such contention. In my opinion, there is no inconsistency between the two Acts. You are allowed \$ 10.00 per day for this work but you are restricted from receiving more than \$ 50.00 for the same. If the work can be accomplished in one, two, three, four, or five days, you are entitled to a compensation of \$ 10.00 per day, but \$ 50.00 is the limit. The Act, in substance, limits the amount of your compensation to five days' work, although it may actually consume a longer time to accomplish the same.

This is substantially the holding of my predecessor, Hon. Frank Clancy, in a letter written to Hon. A. W. Hockenull, Assistant District Attorney at Clovis, on October 25, 1915. At that time, Curry County was a county of the third class. Under the Salary Act,

in counties of the third class, employment of county surveyor shall not exceed seventy-five days per annum. Mr. Clancy held that \$ 750.00 was the maximum which might be claimed by a county surveyor. Opinions of the Attorney General, No. 1661.

Regretting that I am unable to agree with you in this instance, and with the kindest of personal regards, I remain,