

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

January 8, 1942

Frank I. Cowan, Attorney General

William D. Hayes, State Auditor

In reply to your memorandum of January 6th, asking for further opinion on the matter of expense accounts of County Commissioners, we note that you ask "whether the County Commissioners had any right under the law to charge necessary travel expense within their own county in connection with the annual inspection of the highways, provided for by the statutes, or in connection with the proper supervision of construction work in process on those highways for which they are held responsible; and if so, where is the same provided for."

It is our opinion that the words in Section 43 of Chapter 125 of the Revised Statutes "and expense incurred at public hearings away from the county seat" were intended by the Legislature to provide for reimbursement to the County Commissioners for actual expense incurred by them in performing their various duties imposed on them by the Legislature. As our Court stated in *Brown v. Mosher*, 83 Maine, 116: "In the absence of any statutory prohibition, the commissioners had discretionary power," etc. This shows that the Courts do not regard the Board of County Commissioners as simply a ministerial body confined within the strict language of statutory enactments. They are a body endowed with great discretion and when they exercise that discretion, they are simply following out the desires of the Legislature. If in the exercise of that discretion it is necessary for them to incur expense, they are as justly entitled to recompense as is a head of a State Department incurring expense under the same circumstances.

It is well to note that the County Commissioners have no powers as individuals and can act only as a Board. When acting as a Board on inspections and on any matters where evidence is received by them in any form, whether by testimony of witnesses or from their own development of the autoptic evidence, they are, as a matter of fact, holding hearings and certainly are entitled to their expense when so acting.

Attorney General