Opinion No. 134

County Commissioners—Meetings—Extra Sessions, Number of—When Called.

HELD: County Commissioners in counties under fourth class may hold as many extra sessions each month as the business of the county requires and special meetings may be called when the board is not in session.

March 30, 1933.

You have submitted for my opinion the following questions:

"1. May the board of county commissioners hold more than one special meeting of the board in each month in Fergus County, a county of the fifth class?"

"2. May the board of county commissioners call a special meeting at a time when the board is not in session?"

Section 4462, R. C. M. 1921, as amended by Chapter 35, Laws of 1929, gave the county commissioners power to hold extra sessions. After providing for regular meetings, that section provides:

"But the board may at any time, by giving at least two days' posted public notice, hold an extra session of not over two days' duration."

It will be observed that the only changes made were in providing "two days' posted public notice" instead of "five days' public notice," and in limiting the length of the meeting to two days' duration instead of three days'

duration. No other change was made. In other words, whatever power the board had in calling special meetings and the number thereof, prior to the passage of Chapter 35, Laws of 1929, existed after that act was passed.

As the law stood prior to 1929, it was interpreted to mean that the board had the power to call more than one extra session. While our Supreme Court did not have occasion to pass upon the question directly, Chief Justice Brantly, as early as 1912, in the case of Smith v. Zimmer, 45 Mont. 282, took occasion to say that the commissioners had the power to hold meetings at any time when the business required. Former Attorney General Rankin, in Volume 9 Opinions of the Attorney General, page 202 (1920-1922), held: "The phrase 'and the board may at any time, by giving at least five days' public notice, hold an extra session of not over three days' duration' is authority for the board to hold as many extra sessions as they may deem necessary by giving the requisite notice."

I am advised that it was the general practice of various boards of county commissioners, prior to the passage of the act in 1929, to hold extra meetings of the board as often as the business of the county required.

In view of the **wording** of section 4462 as it stood when the legislature met in 1929, and in view of the **interpretation** given to it by the authorities above cited, and the **power** which had been exercised under it by the various boards and in view of the specific changes only as to the **notice of calling,** and the **duration of the extra meetings,** leaving the wording of this section otherwise unchanged, I am of the opinion that the legislature did not intend by such changes to restrict the **power** of the commissioners as to the **number of meetings.** If that had been the intention of the legislators, they would have made it clear by using the phrase "one extra session."

Section 2 of Chapter 35, Laws of 1929, expressly repealed section 4457, R. C. M. 1921, which section stated the **method or manner** provided up until then of calling special meetings; that this section had to do with the **manner** rather than the **power** of calling special meetings, was recognized by former Attorney General Foot. See Volume 14, Opinions of the Attorney General, page 110. This section provided that a special meeting of the board may be ordered by a majority of the board after the adjournment of the regular meeting by having the order entered of record and five days' notice thereof given by the clerk to each member of the board not joining in the order. It also provided that the order must specify the business to be transacted and that none other than that specified must be transacted at such meeting.

Does it necessarily follow that in repealing this section, which prescribed the **manner and method** of calling special meetings after adjournment, the legislature intended to withdraw the **power** of the commissioners to call special meetings at any other time, which is given in section 4462? This conclusion, in my mind, does not necessarily follow from the premises. It seems more reasonable to conclude that the legislature thought that it was not necessary to prescribe any procedure for calling special meetings other than set forth in section 4462 as amended by Chapter 35, Laws of 1929, which required that the public be given notice of the meeting by "two days' posted public notice," and that with this safeguard to the public, it was not necessary to limit the business to be transacted to that specified in the order of record nor necessary to give notice to the members of the board, if their unanimous consent to the meeting and their unanimous presence at the meeting were obtained. Such consent and presence had been held sufficient. See: Morse v. Granite County et al., 44 Mont. 78; Reid v. Lincoln County, 46 Mont. 31; People ex rel. Jones v. Carver (Colo.) 38 Pac. 332.

Moreover, the legislature may have thought that, aside from the lack of a sufficient reason for the restriction as to the subject matter since the public was to be informed by posted notices, it would be difficult to anticipate all of the necessary business to be attended to and to make an order broad enough to describe all the business which might require the attention of the board for a period of two days' duration. At any rate, we are satisfied that there may have been good reasons for repealing this section which dealt

entirely with the manner and means of calling special meetings and that it is not necessary to assume that in doing so the legislature intended to withdraw from the commissioners the important power of calling extra sessions whenever the business of the county required it.

Section 4465, R. C. M. 1921, as finally amended by Chapter 100, Laws of 1931, sets forth the powers of the county commissioners. Their duties are commensurate with the powers granted to them. A reading of the above named chapter is sufficient to inform one of the wide responsibilities placed upon the county commissioners. They are charged with the proper management of the county's business in all its different phases. They are the chief executive authority of the county. Many instances may be cited where it may be necessary for the board to act upon some matter which was not foreseen at the time of the regular session, or in emergencies, in order to protect the public welfare and health or to preserve the interest of the county. For failure to discharge their duties the commissioners may be liable in damages, removed from office or prosecuted under the criminal code. To place upon them such duties and responsibilities and to make them liable for the consequences of their failure to discharge them and at the same time to deny them the power of discharging these duties, and to act in accordance with their responsibilities is, to say the least, inconsistent and unreasonable.

If a reasonable construction may be placed upon a statute, it is the one to be adopted to the exclusion of others not reasonable. Special Road District No. 8 v. Millis, 81 Mont. 86; Wilkinson v. LaCombe, 59 Mont. 518, 197 Pac. 836; State ex rel. County Commissioners v. District Court, 62 Mont. 275, 204 Pac. 600; Endlich on Interpretation of Statutes, 324. So also, if two or more constructions are admissible, courts are never justified in adopting the one which defeats the manifest purpose of the law. State ex rel. County Commissioners v. District Court, supra; Wilkinson v. LaCombe, supra.

The language used by the legislature is clear. "The board may at any time * * * hold an extra session." The phrase "at any time" has been defined to mean "from time to time." Smith v. Howell, 60 N. J. L. 384, 38 Atl. 180. The latter phrase means "as occasion may arise; at intervals; now and then; occasionally." See 27 C. J. 909 and cases cited in notes.

I am unable to agree with the opinion of the learned Attorney General found in Volume 14 Opinions of the Attorney General, page 111. Referring to Chapter 35, supra, he states: "It does not say that they (the board) may at any time hold extra sessions." Obviously the board could not hold more than one session at one time. On the other hand, the construction given by him would make the statute read as he states: "The board may at any time when in regular session, by giving two days' posted public notice, hold an extra session * * *". This, in my opinion, is not a natural nor a reasonable construction. This construction was based on the assumption that a formal action of the board, while in session, was necessary in order to call a meeting.

It is therefore my opinion that both questions you have submitted should be answered in the affirmative. I agree with the conclusion reached by you and by Judge Benjamin E. Berg in State ex rel. Gallatin County v. Pasha of the Ninth Judicial District, in and for Gallatin County, decided Aug. 17, 1931.