

Opinion No. 106**County Commissioners, Powers of—
Public Employees—Holidays—
Collective Bargaining Agreements**

Held: 1. It is within the discretionary power of a board of county commissioners to grant holidays with pay to county employees.
2. County Commissioners have discretionary power to make agreements on the subject of labor conditions unless such agreements are prohibited by law or would barter or assign away governmental powers.
3. It is within the statutory power of boards of county commissioners in Montana to make collective bargaining agreements which embody the principle of the union shop.

July 24th, 1952.

Mr. Wesley Castles
County Attorney
Missoula County
Missoula, Montana

Dear Mr. Castles:

You have requested my opinion on the following questions:

1. Can the board of county commissioners enter into a collective bargaining agreement with a labor union which provides for the union shop?
2. Can the board of county commissioners pay hourly employees for

holidays not worked in addition to leave time granted by law?

Both of these inquiries relate to the same problem; that is, to the powers of the county commissioners to deal with labor problems.

Our statutory grant of powers to boards of county commissioners is contained in Sections 16-1024, 16-1025 and 16-1027, of the Revised Codes of Montana, 1947. Section 16-1024 provides:

"Representing And Management of County Property And Business. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To represent the county, and have the care of the county property, and the management of the business and concerns of the county in all cases where no other provision is made by law. * * *"
Section 16-1025 provides:

"Rules And Enforcement. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To make and enforce such rules for its government, the preservation of order and the transaction of business, as may be necessary."

Section 16-1027 provides:

"Necessary Acts. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government."

These three statutes constitute a board grant of powers to deal with all facets of county business. There are no statutes limiting the powers of the county commissioners to act in the field of labor relations. The general principle governing discretionary acts of boards of county commissioners is stated in 20 C.J.S., No. 81, page 849:

"While acts outside their statutory powers are without validity . . . yet, within the limitation of jurisdiction conferred on them by law county

boards have a wide or at least a reasonable discretion with the exercise of which the courts will not interfere in the absence of fraud or abuse. (cases cited)."

The scope of the Montana statutes was considered in 15 Attorney Generals Opinions, No. 398, at page 279, where it was said:

"It will be observed from the provisions of the foregoing mentioned that no limitations or restrictions are statutes (16-1024, 16-1025, 16-1027) that no limitations or restrictions are placed upon the county commissioners with respect to the terms of the contract of employment, except such as are named in said Chapter 82, in regard to the maximum salaries, unless otherwise provided by law. It appears that the entire matter of the terms of the contract of employment and the fixing of the employee's compensation is left to the discretion of the county commissioners. There is no specific provision of law qualifying or limiting the discretion reposed in the county commissioners."

In this opinion I concur.

In regard to your second question, the problem of holidays not worked is exactly the same as the question of paid vacations, upon which subject there have been numerous opinions issued by this office, in addition to the statutory provisions of Chapter 154, Laws of 1951. This act sets up a statutory minimum of vacation leave to be allowed public employees. In Opinion No. 37, Volume 24, Opinions of the Attorney General, I held that this statute did not limit the amount of vacation which could be granted to county employees, but that the maximum amount was within the sound discretion of the county commissioners provided that it complied with the minimum standards set up by the act. That opinion also held that county commissioners have the inherent power to grant vacation time or separate pay in lieu of vacation to employees who had served less than one year. It has always been the position of this office that paid vacations are a part of the earned compensation of public employees. This is well stated in Volume 15, Opinions of

the Attorney General, No. 398, supra, where it was said:

"The compensation paid them during the vacation period would be considered a part of their regular compensation and supplemental to the pay they are to receive for their services at other times and as part payment for those services."

A holiday is merely a vacation of one day and therefore the same rationale is equally applicable. If the commissioners have the power to grant a vacation of several days with pay, they must certainly have the power to grant one day off with pay. Since I can find no point of difference between the question of vacation pay and holiday pay, it is my opinion that the granting of paid holidays is within the discretionary power of the board of county commissioners.

In your other question you referred to the closed shop as a feature of union agreements. The closed shop is not a question raised by this agreement; however, I feel that a closed shop agreement would be beyond the powers of the commissioners. The difference between the closed shop and the union shop is this: In the closed shop prospective employees must be members of a union before they can be considered for employment. In the union shop any person may be employed but must join the union within a certain length of time after being hired. I believe that a closed shop agreement would be an unlawful restriction on the legal powers of the board of county commissioners to hire whom they choose. However, that question is not raised here.

Under the broad grant of the powers given to boards of county commissioners by our statutes, the commissioners may make any agreement they see fit on a subject of labor conditions as long as they do not barter or assign away governmental powers. Any subject which may properly be covered by an agreement between the board and an individual is a proper subject for collective bargaining. The above quotations on the subject of commissioners' discretion are applicable here. Commissioners may find it more convenient in handling their labor problems to deal with employees on a group rather than an individual basis. To expedite

this it is reasonable for them to demand that all employees having labor problems should deal with them through the unit and it would not be an abuse of their discretion to make a labor union the appropriate bargaining unit.

Therefore, it is my opinion that a board of county commissioners for convenience in dealing with their labor problems may make a collective bargaining agreement embodying the principle of the union shop.

Very truly yours,
ARNOLD H. OLSEN
Attorney General