

August 5, 1954.

Mr. Edwin T. Irvine
County Attorney
Granite County
Philipsburg, Montana

Dear Mr. Irvine:

You have asked my opinion upon the following question:

"Is the hiring of a county agent entirely within the discretion of the board of county commissioners, or may the question properly be submitted to the electors of the county for their vote upon it?"

The matter of hiring agents to carry on extension work in a county is placed in the hands of the board of county commissioners by Section 16-1130, R.C.M., 1947, as amended. That section provides:

"Extension Work in Agriculture and Home Economics—County Commissioners May Appropriate Money For. The county commissioners of any county in the state of Montana may appropriate money from the general funds of the county treasury, or from funds provided by special levy, which the said county commissioners are hereby authorized to make at the same time as other levies for county purposes, for the purpose of carrying on extension work in agriculture and home economics within the said county in cooperation with the Montana state college and the United States department of agriculture. The amount of such appropriation in any county, its method of expenditure, the responsibility for the direction of the work, and the procedure of appointing agents, the compensation and conditions of service of such agents, shall be covered in memoranda of agreement between the county commissioners and the Montana state college." (Emphasis supplied.)

Opinion No. 87.

County Commissioners, Powers of—
County Agents, Power to Employ—
Elections, Special; May be Called
When.

HELD: The entire discretion in the matter of employing county agents resides in the county commissioners, and they have the power and the duty to decide the question without submitting it to a vote of the electors.

No provision is made for review of this action by the electorate, or for initiation of such a proposal by the electorate.

There remains the question whether the board may, in its discretion, call a

special election in order to have the electorate declare its wishes about the problem.

the power and the duty to decide the question without submitting it to a vote of the electors.

Under Montana statutes, this may not be done. A county is a political subdivision of the state, and the county, and its board of commissioners have only those powers expressly conferred upon it, or those necessarily implied from those granted. Where a reasonable doubt exists as to the existence of a particular power, the doubt must be resolved against the existence of the power. (*Strange v. Esva*, 67 Mont. 301, 215 Pac. 807.)

The powers of a board of county commissioners to call special elections, in those cases where there is no specific statutory authorization, are limited by the provisions of Section 23-102, R.C.M., 1947, which provides:

“Special Elections — Purpose and Calling. Special elections are such as are held to supply vacancies in any office, and are held at such times as may be designated by the proper officer or authority. The board of county commissioners shall be authorized to call a special election at any time for the purpose of submitting to the qualified electors of the county a proposition to raise money for any public improvement desired to be made in the county.”

In the case of *State ex rel Rowe v. Kehoe*, 49 Mont. 582, 144 Pac. 162, our Supreme Court defined the term “special election” as follows:

“A special election is one held to supply a vacancy in a public office, or one in which is submitted to the electors a proposition to raise money for any public improvement.”

Since there is no statutory provision giving the county commissioners power to call a special election to decide whether or not the electors wish the employment of a county agent, and no power from which it could be necessarily implied, such power does not exist.

It is therefore my opinion that the entire discretion in the matter of employing county agents resides in the county commissioners, and they have