

Opinion No. 48

County Commissioners—County Treasurer—Liability Insurance
Coverage for Public Officers—Expenditure of County Funds

Held: The county commissioners cannot lawfully expend the public monies for the purpose of acquiring insurance protection for the county treasurer which would provide coverage, for him as an individual, in cases involving the disappearance, destruction, theft or wrongful abstraction of public monies, or for any other failure of the faithful performance of his office through the default or neglect of the treasurer or his deputies.

January 31, 1958

Mr. R. V. Bottomly
County Attorney
Cascade County
Great Falls, Montana

Dear Mr. Bottomly:

You have requested my opinion whether county funds can be expended for the purpose of purchasing insurance coverage for the county treasurer which would provide protection for him as an individual, in cases involving the disappearance, destruction, theft or wrongful abstraction of public monies in his charge, or for any other failure of the faithful performance of his office through the default or neglect of the treasurer or his deputies.

Under the provisions of Sections 6-201, 6-306 and 6-331, RCM, 1947, the losses of the nature set out above would be covered, as far as the county is concerned, from the treasurer's official bond. The purpose of the proposed insurance coverage, then, would be to protect the treasurer as an individual should the bond surety look to him for subrogation of any losses incurred under his official bond.

The county commissioners have no power other than that derived expressly or by necessary implication from the provisions of the statutes defining their powers. (State ex rel. Lambert v. Coad, 23 Mont. 131, 137, 57 Pac. 1092; State ex rel. Gillette v. Cronin, 41 Mont. 293, 295, 109 Pac. 144; Morse v. Granite County, 44 Mont. 78, 89, 119 Pac. 286; see also McNair v. School District No. 1, 87 Mont. 423, 425, 288 Pac. 188.)

The statutes relating to the powers of the county commissioners concerning the expenditure of public funds and the conduct of county affairs are devoid of any authority relating to the private indemnification of a county officer or employee for any individual liability that he may incur during the course of the fulfillment of his duties. Under the authorities cited above it follows that there is no statutory authority upon which the county commissioners could justify the expenditure of public funds for the purpose sought here. (Morse v. Granite County, *supra*)

In addition it should be noted that, such an expenditure of public funds would be for a purely private use and thus an act prohibited by the provisions of Section 11, Article XII of the Montana constitution. (Stanley v. Jeffries, 86 Mont. 114, 129, 284 Pac., 134; State ex rel. Mills v. Dixon et al., 66 Mont. 76, 90, 213 Pac. 227) In this connection, the cases in which the state or county expends public funds or the premium payment upon an official bond should be distinguished. (Section 40-1727, RCM, 1947) In such cases the expenditures are not made for the benefit of the officeholder as such, but for the protection of the entire citizenship. (43 Am. Jur. "Public Officers" 173, Section 394) And it is well settled that in cases in which no duty rests upon the public body to pay the premiums on the bond of a public

officer, it need not repay the officer the amounts of premium paid by him. (Anno: 66 A.L.R. 795; 43 Am. Jur. "Public Officers", 184, Section 413.)

Because of the lack of any express or implied authority on the part of the county commissioners to expend the public monies for such a purpose, and because of the serious constitutional objection to the expenditure of tax revenue in such a manner, it is my opinion that the county commissioners cannot lawfully expend the public monies for the purpose of acquiring insurance protection for the county treasurer which would provide coverage, for him as an individual, in cases involving the disappearance, destruction, theft or wrongful abstraction of public monies, or for any other failure of the faithful performance of his office through the default or neglect of the treasurer or his deputies.

Very truly yours,
FORREST H. ANDERSON
Attorney General