

Opinion No. 37

**COUNTIES; Powers of; curfew; no power to declare in unincorporated town or village—COUNTY COMMISSIONERS; Powers of; curfew; no power to declare in unincorporated town or village—
CURFEW; county commissioners have no power to establish in unincorporated town or village—VOLUME 27
ATTORNEY GENERAL'S OPINIONS, No. 71**

Held: County Commissioners do not have the power to declare a curfew regulating the hours that minors under the age of sixteen may be in or about the streets of an unincorporated city or town.

October 26, 1959

Mr. Russell K. Fillner
Rosebud County Attorney
Forsyth, Montana

Dear Mr. Fillner:

You have requested my opinion whether the County Commissioners have the power to establish a curfew regulating the hours that minors under the age of sixteen may be in and about the streets of an unincorporated town or village.

Counties can only exercise such powers as are expressly granted by the state, together with implied powers necessary for execution of powers expressly conferred. *Hersey v. Nelson* (1913), 47 Mont. 132, 131 Pac. 30; *Edwards v. Lewis and Clark County* (1917), 53 Mont. 259, 165 Pac. 297; *Sullivan v. Big Horn County* (1923), 66 Mont. 45, 212 Pac. 1105; *State v. Kuhr*, 86 Mont. 377, 283 Pac. 758.

The Revised Codes of Montana do not contain any express provision giving the county commissioners the power to declare a curfew regulating the hours that minors under the age of sixteen may be in and about the streets of an unincorporated city or town. There is also no implied power which can be derived from any power expressly granted.

It is clear that the codes do not give the county commissioners any power to enact a criminal penalty to enforce such curfew and it has previously been held that County Commissioners are without power to provide criminal penalties without legislative enactment since the legislature has never delegated this power to them. (Vol. 27, Opinions of the Attorney General, Opinion 71). Without such criminal provisions a curfew would be unworkable.

It is therefore my opinion that the County Commissioners do not have the power to declare a curfew regulating the hours that minors under the age of sixteen may be in or about the streets of an unincorporated city or town.

Very truly yours,
FORREST H. ANDERSON
Attorney General