

Powers of Board—Employment of Detective—Contracts.

Boards of County Commissioners have no authority under the laws of this State to employ a detective for the purpose of procuring evidence against persons committing larceny, or other crimes, against citizens of their county, nor have they power to employ an attorney to whom such a detective is to make reports of his investigations. County Commissioners can only make contracts that are legal charges against the county, when acting

as a board, duly and regularly called and organized, as provided by Sections 4220, 4215 and 4216 of the Political Code.

As to whether an agreement made by one or more members of the board when not in regular or duly called special session, but purporting to be made by the board, is binding upon such members individually, is a question to be determined from the peculiar wording and manner of signing the agreement.

Helena, Montana, May 25, 1905.

Board of County Commissioners, Sweet Grass County, Big Timber, Montana.

Gentlemen:—The letter from your County Clerk of May 17th, requesting an opinion to you regarding the claim of the Thiel Detective Service Co. of Spokane, against Sweet Grass County to hand.

From the facts submitted it appears that there had been many violations of the law in the County, especially along the lines of cattle rustling; that two members of the Board of County Commissioners decided that it would be advisable to employ a detective to look up evidence for the purpose of instituting prosecution against some of the alleged cattle thieves; that these two members of the Board, not at a regular or duly called special meeting of the Board of County Commissioners, but at a private meeting, entered into a contract with the Thiel Detective Service Co., wherein it was agreed that Sweet Grass County should pay a detective a certain sum per day and expenses for services rendered in looking up evidence against these cattle thieves. That the detective company sent a detective to Sweet Grass County, who performed the services along the lines above indicated, and, therefor, at the next regular meeting of the Board of County Commissioners, the Thiel Detective Service Co. presented their claim against Sweet Grass County for the sum of \$417.75, for the alleged services of the detective. It appears further that these two Commissioners at the same time employed Mr. A. G. Hatch, an attorney at law, to advise with and to receive reports that might from time to time be made by the detective, for which Mr. Hatch has also presented his claim amounting to \$45.00 against Sweet Grass County. That the Board did not examine, settle or allow either of such accounts, but laid the matter over and directed the County Clerk to ask an opinion from the Attorney General.

It has been held by the Supreme Court of the State of Montana in the case of Williams vs. Board of County Commissioners of Broadwater County, 72 Pac., 755, that no action of the Board of County Commissioners can be taken except at a regular meeting, as provided in Section 4220, Political Code, or a duly called special meeting, as provided in Section 4215 and 4216 in the same code, such case holding that any contract or agreement made by one or more of the members of the Board, when they are not sitting as a duly organized board, is not a legal charge against the county. "A board of county commissioners can act only when convened as a board in legal session, either regular, adjourned or special, as may be provided by statute."

7 Am. & Eng. Ency. of Law, 979.

Board of Commissioners vs. Ross, 46 Ind., 404.

"Where a board of supervisors attempts to audit and allow accounts not legally chargeable to its County, it is an act in excess of jurisdiction, done without the power to make them valid, and is null and void."

7 Am. & Eng. Ency. of Law, 1003, and cases cited thereunder.

From the above authorities, it is claimed that an attempted contract or agreement made by two members of the board when not sitting in a duly organized session, could in no way make the claims presented, a legal charge against the County, and under Subdivision 12 of Section 4230 of the Political Code, the board must only allow accounts legally chargeable against the County. Furthermore it seems from the facts in this case, that even had the members of the Board been duly organized at the time they entered into the contract with the detective company and with Mr. Hatch, that the same would not be binding against the County, for the reason that under the laws of the State, the Boards of County Commissioners have no authority to enter into a contract or agreement for the purposes stated above. Boards of County Commissioners must not exceed the authority vested in them by statute.

Williams vs. Board of County Commissioners of Broadwater County (Supra.)

No where under Section 4230 to 4233, Political Code, defining general and permanent powers of boards of county commissioners, or elsewhere in the statutes, can there be found any section susceptible of the construction that would give authority to the Board of County Commissioners to employ a detective to travel about for the purpose of procuring evidence against thieves who were stealing property from other private individuals within the county, nor to employ an attorney to whom such a detective might make reports. In the case of Hawk vs. Marion County, 48 Iowa, 473, the facts were as follows: the county treasury had been robbed; two members of the Board when not in regular session, offered a reward for the arrest and conviction of the guilty parties, and offered a reward for the recovery of the stolen money. The court there held that the county commissioners had no authority of statute to offer such a reward for the arrest of such persons, but that they might offer a reward for the recovery of the money stolen belonging to the County, under the general authority of the statutes authorizing them to do whatever may be necessary to fully discharge the duties of their office in the government of the County.

In the above case the two commissioners had offered \$5,000.00 reward for the recovery of the money, and \$5,000.00 for the arrest and conviction of the guilty parties. After the supreme court held that the Commissioners had no authority to offer the reward for the arrest and conviction of the guilty parties, the persons who made the arrest and secured the conviction, brought suit against the two members of the board as individuals, to recover this \$5,000.00. This action was reported in case of Huthsing vs. Bousquet, 7 Fed. Rep. page 833. The circuit judge in that case held that the supervisors had no authority to offer a reward for the

arrest and conviction of these parties, and further held that as the two members of the Board, in offering the reward, had signed their names as members of the Board, and that the offer purported to be the act of the Board, and that the persons making the arrest had dealt with these two members as the Board and not as individuals, that they could not recover in an action against these two members as individuals. The court said, "The plaintiff was bound to know the law, and we must proceed therefor upon the assumption that he did, when he accepted the offer and performed the services knew that the Board had no authority to offer the reward. The offer was ultra vires. The plaintiff knew it. It was his own folly to accept such an offer."

In the case of the Board of County Commissioners of Granite County vs. Bradford, 72 Ind., page 457, where the commissioners offered a reward for the arrest of a certain criminal, the court held that it had no such authority, and used the following language: "The board of commissioners of a county is a creature of the statute, and is vested with and possessed of just such powers, rights, privileges and franchises, corporate, judicial, legislative and ministerial, as the statute has conferred upon it, and such as are clearly and necessarily implied, to enable it to carry out and accomplish the objects and purposes of its creation. The law confers no power, and enjoins no duty, upon the board of commissioners of a county to aid in the arrest, prosecution or conviction of a person charged with the commission of crime, either by an offer of reward or by the employment of detective or professional skill. If it be conceded that the facts stated in appellee's complaint are sufficient to show a contract by the appellant for the payment to the appellee of the reward alleged to have been offered by it for the arrest of Perry Myers (a point which may well be doubted, but which we need not and do not decide), we are of the opinion that this contract, by and on the part of the appellant, was clearly ultra vires, and can not be enforced."

In the light of the authorities above cited, I am of the opinion, that said claims do not constitute legal charges against your County, and you are therefor advised that the claims of the Thiel Detective Service Co. for \$417.75, and Mr. A. G. Hatch for \$45.00, are not legal charges against the County of Sweet Grass. As to whether the two commissioners, who entered into the writing with the detective company, are personally liable, depends upon the wording and manner of signing such writing by such members, as is indicated by the decision in the 7 Fed. Rep. cited above.

The above opinion should not be construed as holding that under Sub. Div. 15 of Section 4230, Political Code, the Board of County Commissioners do not have authority to employ additional or assistant counsel to conduct or assist in the prosecuting or defense of suits, to which the county or state is a party. And said Sub. Div. 15 of said section should not be considered or construed as authority for the legality of the claims of said detective agency or of said Hatch.

Yours very truly,

ALBERT J. GALEN,

Attorney General.