

**County Commissioners, Powers Of. Judgment, Compromise
Of. Bond, Compromise of Judgment On.**

The Board of County Commissioners have no authority to compromise a judgment rendered on a forfeited bail bond.

Helena, Montana, Dec. 9, 1907.

Hon. Board of County Commissioners,
Beaverhead County
Dillon, Montana.

Gentlemen:—

I am in receipt of your communication of December 2nd, in which you submit for the consideration of this office the following question:

“Has the Board of County Commissioners authority to compromise a judgment rendered by default in an action on a forfeited bail bond?”

We are not advised as to any existing facts, or as to the purpose for which the bond was given, except as indicated by the name “bail bond”, but we assume that the basis of the action was the forfeiture of an original bond given for the appearance of a defendant in a criminal case.

It is elementary that the authority of the board of county commissioners is limited to the powers conferred by statute, and to the incidental powers necessary to carry into effect the general powers granted.

Board of Commissioners vs. Bradford, 72 Ind. 455.

Williams vs. Board of Commissioners, 28 Mont.

360, and cases cited

Compromising disputed claims, made either by or against the county, may, under certain conditions, be the exercise of sound business judgment, and even may be necessary to the protection of the county's interests. The discretionary power conferred upon the Board for the purpose of enabling it properly to guard and protect the interests of the county, may be extended to such conditions, but here the question arises with reference to a judgment on a forfeited bail bond. The general powers of the Board are enumerated in and conferred by Section 4230, Political Code, and amendments thereto. No express authority is found therein for compromising judgments of the kind named in the question submitted; nor is any such authority conferred by Section 2340, et seq., Penal Code, which deals with bail bonds.

In *Commissioners vs. Lineberger, et al.* 3 Mont. 231, the Territorial Supreme Court, in passing upon the statute as general and comprehensive in its terms as is Section 4230, Political Code, held that the commissioners had no authority to "settle and compromise" with a defaulting treasurer, and to discharge him and his sureties from his official bond without receiving the amount due from him to the county. This same doctrine, of course, would apply to any defaulting official and if the commissioners have no power to compromise a claim arising from a default on the part of the official, has the board the authority to compromise a claim arising from the wrongful act of a defendant in a criminal case, whereby he failed to appear in accordance with the terms of his bond? And if no power exists in the board to compromise a claim prior to judgment, by what authority can the board compromise a claim after it has become merged into judgment? In other words, at what stage of the proceedings does the jurisdiction of the Board attach?

In *Railway Company vs. Anthony*, 73 Mo. 431, the Supreme Court held that the Board of Supervisors had authority to compromise a disputed tax claim which was then in process of litigation. That case had been once to the Supreme Court, where it was reversed and returned for a new trial. Pending the new trial the claim was settled, and the court held that this was within the power and authority of the Board. But, for aught the reported case shows, the action of the Board was there based upon a doubt as to the legality of the claim, or the inability of the Board to secure evidence sufficient to sustain the claim.

Suprvisors vs. Sullivan, 51 Wis. 115, was a case somewhat similar to that indicated by your question. The defendant had been convicted of assault and battery and sentenced to pay a fine, and in order to secure his liberty he executed to the Board his note which was secured by mortgage. Subsequently the Board brought an action to enforce the payment of the note and to foreclose the mortgage, but the Supreme Court in passing upon the question, denied that the Board had any jurisdiction on the premises, saying in part:

"An examination of the statutes regulating criminal actions

of this kind clearly shows that the county board has no control of any kind over actions of this kind, or over the judgments rendered in such actions."

While the county is in a sense a party financially interested in judgments of fine or forfeiture in criminal cases, for the moneys collected are usually put into the school fund, yet the jurisdiction of the county over such matters does not attach until the money has actually passed over to the possession of the county. Prior to that date the county has no jurisdiction, and cannot fix either the amount of the bail, nor increase or diminish the amount as fixed by the court. And while the county receives the benefit of the money when collected, it has no jurisdiction to control the procedure by which the collection is made. The proper time for defendant to seek relief in the action is prior to the judgment, and if the statute has not conferred authority upon the Board to compromise judgments rendered, no such power exists, for the Board cannot sit either as a court of law or equity.

You are therefore advised that the Board does not have authority to compromise a judgment rendered in an action on a forfeited bail bond.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.