

**Towns, Expenses of Incorporating. County Commissioners,
Expenses of Incorporating the Town Incurred By.**

The expense authorized to be incurred by the County Commissioners under Sections 4721 and 4722 of the Political Code

for the purpose of voting on the question of incorporating a town are proper charges against the county, and are not chargeable to the inhabitants of the territory proposed to be incorporated.

Helena, Montana, April 20, 1907.

Hon. J. W. Speer,
County Attorney,
Great Falls, Montana.

Dear Sir:—

Your letter of the 11th inst., requesting opinion of this office upon the following question, received:

“Where the inhabitants of any part of a county desire to be organized into a city or town and petition the Board of County Commissioners in the manner provided in Section 4720 and 4721 of the Political Code, does the expense of the special election ordered by the County Commissioners, under Section 4721, and the expense of publishing notice of election, etc., have to be paid by the county, or are they taxed to the residents of the proposed city or town?”

In answer to the above question you are advised that all expenses incurred in holding the elections provided for by Sections 4721 and 4722 of the Political Code are proper charges against the county. Such expenses are incurred by order of the Board of County Commissioners, pursuant to law, directing them to post such notices and call such elections. The latter part of Section 4721 provides that “Such elections must be conducted as provided in Title II, Part III, of this Code;” and the latter part of Section 4723 provides “The election must be conducted in the manner required by law for election of county officers.”

Nowhere does the law provide that the expenses incurred in holding such elections shall be charged to the municipal corporation. And in the absence of such an express provision we know of no authority whereby the Board of County Commissioners, who are authorized to act only for the county, could make contracts which would be binding upon a municipal corporation which is a separate and distinct corporate body, and not a party to such contract.

Until after such elections are held there are no officers of the municipal corporation, and therefore no persons authorized by law to assume such expenses for or on behalf of the municipal corporation; nor are there any funds out of which the municipal corporation could pay such expenses if they were assumed. It might be that the proposed incorporation would not carry at the election held under Section 4721, in which event, it is apparent there would be no one against whom the expenses of such election could be legally charged, save and except the person authorizing the incurring thereof, which would be the county, by and through its Board of County Commissioners.

While the proposed incorporation is more particularly for the benefit of the residents residing within the boundaries of the territory proposed to be incorporated, still, all such persons are residents, and

most of them taxpayers, of the county, and the policy of the law seems to be, that as such residents and taxpayers of the county, they have the right of submitting the question of incorporation, and of electing the necessary officers to perform the duties of the incorporation when organized, at the expense of the county of which they are residents.

Very truly yours,

ALBERT J. GALEN,

Attorney General.