

County Commissioners, Powers of in Purchasing Real Property.

Boards of county commissioners are clothed with power to purchase necessary real property for the use of the county, but are limited by the provisions of Par. 8, Sec. 2894, R. C. and the procedure there outlined must be followed strictly.

February 25th, 1914.

Hon. C. F. Gillette,
County Attorney,
Hardin, Montana.

Dear Sir:

Under date of the 20th instant you submitted the following proposition to this office:

"The chairman of our board of county commissioners recently filed a petition in the district court for the appointment of appraisers to appraise certain described property as a court house site. Order appointing appraisers describes the property to be appraised. Report of appraisers appraises this property at \$2,000.00, and they also appraised two adjoining half blocks of ground at \$1,000.00, making a total of \$3,000.00 for the entire tract. As the tract which they were appointed to appraise contains but one square block of ground and is appraised at \$2,000.00 and the two separate tracts which contain one square block are appraised at \$1,000.00, it appears that the block which they were appointed to appraise is valued at \$1,000.00 too high.

"Under these conditions and under the report of the appraisers, has the board of county commissioners power to purchase the whole of the land described in the report for the sum of \$3,000.00?"

With your letter were enclosed copies of the petition of the board of commissioners requesting the appointment of appraisers, the order of the court appointing the appraisers, and the report of the appraisers, all of which have been examined. By the petition of the board, it appears that the county commissioners of your county believed it to be to the best interests of the county to purchase a court house site, and for the purpose prayed the court for the appointment of three disinterested citizens to act as appraisers, for the purpose of appraising a specific piece of property, which is described in the petition. The order of the court appointing the appraisers discloses that pursuant to the prayer of the petition of the commissioners, three disinterested persons, competent and capable to act, were appointed to appraise the specific piece of real estate mentioned in the petition aforesaid. The report of the appraisers discloses that due appraisal was made of the specific piece of property referred to and the value thereof fixed at \$2,000. This report also shows:

"That we were informally asked to appraise certain other property, to-wit:"

Then follows a description of the property which it is unnecessary here to insert and the value thereof is fixed at \$1,000. The return of the appraisers is silent as to its authority to appraise this second tract, save the single declaration above quoted.

Paragraph 8, Sec. 2894, Revised Codes, 1907, provides as follows:

"The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: * * *

"8. To purchase, receive by donation, or lease any real or personal property necessary for the use of the county, preserve, take care of, manage and control the same; but no purchase of real property must be made unless the value of the same has been previously estimated by three disinterested citizens of the county, appointed by the district judge for that purpose, and no more than the appraised value must be paid therefor."

The specific provision of this section is to the effect that before property may be purchased by the county it must be appraised by three disinterested citizens of the county, appointed by the district judge for such purpose. Since the prayer of the commissioners and the order of the court are silent as to the additional tract of land appraised by the commissioners, I am of the opinion that this board exceeded its jurisdiction in respect to such appraisement. This act upon their part does not, however, vitiate anything done by it within the scope of its designated authority, and the commissioners are at liberty if they so desire to purchase the tract named in the petition and order at not to exceed its appraised value. If it be found that such tract is inadequate for the purpose the commissioners may, of course, again petition the court for the purpose of acquiring necessary contiguous property.

The conclusion here reached is based upon numerous holdings of our supreme court, defining the legal status of counties and the powers of boards of commissioners, and your attention is directed to the case of Hersey v. Neilson et al. 47 Mont. 132, where the authorities are collated and where the doctrine is specifically laid down that counties are political subdivisions of the state for governmental purposes, and as such they are subject to legislative power, and they have only such powers as are expressly conferred by law, or necessarily implied from those expressed, and that where a board of commissioners act upon any question, such act must be justified by reference to the law defining and limiting its powers on the subject.

Yours very truly,

D. M. KELLY,

Attorney General.