

Boards of County Commissioners, Meetings of. Accounts Against Counties. Time for Settlement and Allowance of Accounts Against Counties.

A board of county commissioners cannot adjourn regular meetings from time to time to give them an opportunity to examine, settle and allow accounts against the county monthly instead of quarterly, but must consider and examine such accounts at the quarterly meetings, as provided by Sub. 12 of Sec. 2894, R. C.

Hon. H. S. Magraw,
State Examiner,
Helena, Montana.

March 18th, 1914.

Dear Sir:

I am in receipt of your communication under date of the 14th instant, with an inquiry from the board of county commissioners of Park County attached thereto. The question submitted by the said board of county commissioners and yourself is substantially as follows:

"May a board of county commissioners adjourn their meetings from time to time to give them an opportunity to examine, settle and allow accounts against the county monthly instead of quarterly?"

It is stated by your letter and by that of the commissioners that the custom of paying claims against the county once each quarter is not for the best interests of the county, both because the counties are unable by this method to get favorable prices upon materials and supplies and because this method of conducting the county's business does not fit very well with the accounting methods installed in the various counties. A communication from the board of county commissioners states that the county attorney of Park County held that such matters could not be considered at other meetings than the regular quarterly meetings, which opinion was based upon an opinion upon this subject rendered by this office December 17th, 1910, to J. H. Stevens, county attorney, Kalispell. The express ques-

tion raised by your letter and that of the commissioners of Park County was considered in this former opinion, and it was held that in counties other than the first and second classes the commissioners could not adjourn their meetings to the first of the month for the purpose of paying bills monthly. In as much as the question of expediency in the matter implies that we should overrule the former opinion, I have given the matter special attention.

The meetings of boards of county commissioners are provided for in Secs. 2891 and 2892 of the Revised Codes of Montana, 1907. By these sections two sorts of meetings are provided for—regular meetings to be held on the first Mondays of December, March, June and September of each year, which meetings are limited to five days each, except the December meeting, which may be as long as eight days. Provision is also made in this section of the code for extra meetings called upon due notice. Sec. 2892 provides:

“Such other meetings must be held to canvass election returns, equalize taxation and other purposes as are prescribed in this code, or provided by the board.”

Under the provisions of Sec. 2894, which defines and limits the general and permanent powers of boards of county commissioners, we find in Subdiv. 12 that:

“The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: (12) at the regular meetings of the board to examine, settle and allow all accounts legally chargeable against the county, except salaries of officers and order warrants to be drawn on the county treasurer therefor, and provide for the issuing of the same.”

In view of this last quoted section, bills against the county cannot be considered at any other meeting than regular meetings; that is, the quarterly meetings provided for in Sec. 2891. The language used by Sec. 2894, Subdiv. 12, excludes the idea of the consideration of bills at any other than regular meetings, under the familiar principle that the express mention of one thing excludes the idea of any others. Being a municipal corporation, the officers of a county are strictly limited to the powers conferred upon them by statute.

There is a very valid and potent reason for prescribing that bills against the county shall be considered at the regular meetings and none other. The taxpayers of the county have a right to object to the payment of bills, if the same have not been properly contracted, and the law of fixing the time when bills are to be considered gives an opportunity for objections to be made. It is generally true, as you state in your letter, that regular meetings may be adjourned to some specified time for the attention or conclusion of the business taken up at the first regular meeting. Dillon, in his work on Municipal Corporations, has stated the rule as follows:

“A regular meeting, unless special provision is made to the contrary, may adjourn to a future fixed day; and at such meeting it will be lawful to transact any business which

might have been transacted at the stated meeting, of which it is indeed but the continuation. Unless such be the special requirement of the charter or of a by-law, or the established or general usage, the adjourned regular meeting would not, it is supposed, be limited to completing particular items of business which had been actually entered upon and left unfinished at the first meeting; but might, if the adjournment was general, do any act which might lawfully have been done had no adjournment taken place."

Dillon, Mun. Cor., 5th Ed., Sec. 525.

Under the rule as stated above the public would have presumptive notice that bills would or might be considered at any part of a regular meeting, whether before or after a recess. The usual practice is, I believe, for the board to take up bills presented even after the regular session has begun, but in all cases the board is limited to a consideration of those bills or accounts, which are legally chargeable against the county—that is, accounts which are due at the time stated by law for the quarterly meeting. All benefit of the limitation imposed by Subdiv. 12 of Sec. 2894 would be taken away under any other interpretation. The presumption of notice extends only to those bills which are legally chargeable against the county upon the first Mondays of December, March, June and September. There is no presumption that the public has notice of the consideration of bills which do not fall due until after these dates. While there are many cases that hold that a public, legislative, or quasi judicial body is not confined entirely to a consideration of unfinished items of business, upon reconvening after a recess in a stated or regularly called meeting, all of the cases, so far as I know, hold that only such business may be considered upon reconvening as could have been legally considered in the first instance. This principle has been laid down in Scadding v. Lorant, 5 Law and Equity Reports, 16, and People v. Bachelor, 22 N. Y. 128. Applying this rule to the case of county commissioners in their consideration of bills against the county, we reach the following conclusions:

1. That bills and accounts may be considered only at regular quarterly meetings. (Sec. 2894, R. C., Subdiv. 12.)
2. That in case of adjourned regular meetings, only such bills or accounts may be considered as were legally chargeable against the county at the time stated for the regular meeting.
3. That, therefore, they could not take a recess in a regular quarterly meeting for the purpose of examining, settling and allowing accounts against the county falling due after the time prescribed for the regular quarterly meeting.

This conclusion is in accordance with the result reached in the opinion hereofore referred to, and you are, therefore, advised that the board of county commissioners cannot under our law adjourn regular meetings from time to time to give them an opportunity to

examine, settle and allow accounts against the county monthly instead of quarterly.

Yours very truly,

D. M. KELLY,

Attorney General.