

Automobile, Purchase of With Public Funds. Board of County Commissioners, Cannot Purchase Automobile. County Commissioners, Per Diem, etc., of.

The county commissioners are entitled to per diem and actual traveling expenses when examining the condition of county roads and bridges, and are without authority to purchase an automobile with public funds for such purpose.

February 24, 1916.

Hon. P. R. Heily,
County Attorney,
Columbus, Montana.

Dear Sir:

I am in receipt of your letter of the 21st instant, setting forth that the county commissioners of your county desire to purchase an automobile with county funds for the purpose of using the same in connection with the viewing and building of county roads, and you request my opinion as to whether the purchase of an automobile with county funds for such a purpose would be lawful?

You likewise request my opinion upon the proposition that where the board of county commissioners allow a special deputy to the county assessor, whether when such appointment is made, it is required to be confirmed by the board, and whether the board may vacate such appointment after it has been made.

Upon the first proposition submitted, you are advised that where an expense is sought to be incurred against the county, there must be a law to authorize it (*Wade v. Lewis & Clark Co.*, 24 Mont. 338). Boards of county commissioners are not clothed with general jurisdiction, but have only statutory powers, and there is no statutory authority for the purchase of an automobile with county funds for the purpose of using it in viewing roads and bridges, or for any other purpose. The law as it stands makes provision for a per diem and actual traveling expenses of the commissioners when making inspections of any contract construction work on any highway or bridge in the county (Chapter 3, Section 13, Chapter 141, Laws of 1915). The phrase "actual traveling expenses", excludes, I think, the doubtful expedient of permitting the commissioners to conduct such inspections through the medium of an automobile purchased for such a purpose with public funds.

Upon the second proposition, I am of the opinion that where the commissioners allow an additional deputy to the county assessor, the power to make the appointment vests in that officer, and when the appointment is made, it need not be confirmed by the commissioners, but becomes effective from the time the certificate of appointment is filed in the office of the county clerk, and the county commissioners are then without jurisdiction to revoke the appointment, (*Revised Codes*, 3136, 3123 and 2964).

Yours very truly,

J. B. POINDEXTER,

Attorney General.