

**Automobile, Purchase of by County. Board of County Commissioners, Discretion of. Road Machinery, Automobile as. Unincorporated Town, County Cannot Contract With. Contract, With Unincorporated Town.**

The question of whether the board of county commissioners should purchase an automobile or motor truck as a part of their road machinery, is a matter within the discretion of the commissioners. A county cannot make a contract with an unincorporated town since such a town has no power to contract.

March 28th, 1916.

Hon. C. C. Covington,  
Chairman, Board of County Commissioners,  
Helena, Montana.

Dear Sir:

I am in receipt of your communication under date the 21st instant, referring to an opinion of this office under date February 24th, in which it was held that the Board of County Commissioners had no authority to purchase an automobile for the purpose of inspecting contract or work upon county roads, and asking whether the Board may purchase and maintain with county funds an automobile to be used as a part of road equipment of the county by the road building forces, for the purpose of transporting men, tools and materials, and generally facilitating the road work of the county. The opinion formerly rendered, and to which you refer, considered this question merely from the point of inspection of highways, and correctly held I think, that an automobile for these purposes was not a proper charge against the county funds. However, the power to build roads, and to furnish machinery and tools therefor, and to "cause to be done whatever may be necessary for the best interests of the roads and road districts of their several counties" (Sub. 8, Sec. 2, Chap. 3 of Chap. 141, Session Laws 14th Leg. Ass.), would imply power to furnish transportation for laborers, machinery and tools, and if necessary because of the amount of work being done, or the inaccessibility of the region where it was being done, to have a motor truck, or an automobile, the question of purchase of such a vehicle would be a matter within the discretion and business sense of the Board. Reduced to its last analysis, it would be a question of fact for the Board to determine whether the sum to be saved by such a purchase would amount to more than the sum represented by the interest on the investment, depreciation, repairs and cost of maintenance. If, in view of these questions, the board deemed it to be necessary to the best interests of the county to purchase a machine, I am of the opinion that they would have such power.

You submitted also an opinion of the county attorney of Lewis and Clark County upon the question of

"Whether there was any legal reason why the county should not form a copartnership with an unincorporated town for the purpose of purchasing a lot and constructing a building thereon, to be used jointly by the county as a jail and by the town as a fire station?"

The county attorney holds:

1. That no such contract can be made, because the town of East Helena is unincorporated, and hence, has no power to contract:
2. That if, as he suggests, in answer to the first question, the inhabitants organize a fire district under the provisions of Chapter 107, Laws of 1911, the title to the property must be wholly in the county;
3. That in the event of such an arrangement, the county would be liable for the debts contracted in building or improving such property.

I am of the opinion that the results reached by the county attorney are correct for the reasons stated by him.

Yours very truly,

J. B. POINDEXTER,

Attorney General.