

Highways—County Commissioners—Wages.

A Board of County Commissioners would not have authority to allow a claim providing for more than \$6.00 per day for a man and team. See Chapter 172, 1917 Session Laws, Chapter III, Section 6.

June 16, 1917.

Mr. David H. Morgan,
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Dear Sir:

You have submitted to me the question of whether or not a Board of County Commissioners would have authority to contract for the employment of a man and team upon the highways at a rate in excess of \$6.00 per day.

Chapter 172 of the 1917 Session Laws is a re-enactment of the general highway law. Chapter III, Section 2 of this Act provides in part as follows:

"The Board of County Commissioners of the several counties of the state have general supervision over the highways within their respective counties.

1. They may in their discretion, keep the county divided into suitable road districts, place each of such road district in charge of a competent road supervisor and order and direct each of such supervisors concerning the work to be done upon the public highway in his district.

3. They must cause to be surveyed, viewed, laid out, recorded, opened, worked and maintained, such highways as are necessary for public convenience. * * *

Section 6 of this same subdivision provides:

"Whenever it becomes necessary for any Road Supervisor, in the repairing of any public highway in his district, to secure the assistance of other persons, he shall be empowered to employ suitable laborers, teams and implements, and to contract as to the price to be paid therefor, which must not exceed the rate of Four Dollars (\$4.00) per day of eight hours for each person and Six Dollars (\$6.00) per day of eight hours for man and team. * * *

It appears that at the present time it is extremely difficult, if not impossible, in some counties of the state to employ a man and team for \$6.00 per day, on account of the high wages paid to men in other employments and the present high price of hay and grain. But the legislature has prescribed the maximum price and this must control in the absence of some exception to the contrary.

It was said by our Supreme Court in *Hersey v. Neilson et al*, 47 Mont. at 145:

"That the authority of the board of county commissioners of Hill county to let a contract for county printing must be found written in the statutes, or necessarily implied, or it does not exist, is well understood. (*State ex rel. Lambert v. Coad*, 23 Mont. 131, 57 Pac. 1092.) In *Morse v. Granite county*, 44 Mont. 78, 119 Pac. 286, this court, in speaking of the authority of a county, said: 'Its board of commissioners—its executive body—is a body of limited powers, and must in every instance justify its action by reference to the provisions of law defining and limiting these powers.' * * * The legislature in its wisdom has seen fit to prescribe the conditions upon which its agents—the counties—may conduct county business, and in the absence of constitutional restriction the authority to do so cannot be doubted."

See also *State ex rel. Gillett v. Cronin et al*, 41 Mont. at 295. See also *Stevens v. Ravalli County*, 25 Mont. 306, 11 Cyc. 390-1; *Santa Cruz County v. Barnes (Ariz.)*, 76 Pac. 621; *Board of Commissioners v. Davis (Colo.)*, 150 Pac. 324.

In *Allen v. Board of Commissioners (Okla.)* 116 Pac. 175, the court said:

"It is a settled rule that the grant of powers to boards of county commissioners must be strictly construed, because

when acting under special authority they must act strictly on the conditions under which the authority is given; that they can exercise only such powers as are especially granted, or as are incidentally necessary for the purpose of carrying into effect such powers; and where the law prescribes the mode which they must pursue in the exercise of such powers, it, as a rule, excludes all other modes of procedure. * * *

(Citing a long list of authorities.)

In *State v. Boerlin* (Nev.), 98 Pac. at 403, after using substantially the same language, the court said:

"As to the wisdom, policy, and expediency of the law, these are matters for the people of the state in Legislative assembled to determine. An executive office should execute the law as it is made. It is not for the board of county commissioners to substitute their judgment for that of the Legislature as to what is best for the county, where a statute expressly defines what shall be done. * * *"

In view of the foregoing, I do not believe that a board of county commissioners would have authority to allow a claim providing for more than \$6.00 per day for a man and team for work upon the public highways.

Respectfully,

S. C. FORD,

Attorney General.