

**County Commissioners—Contracts—County Librarian—
Authority of Board of County Commissioners to Remove
Without Cause. Section 3 of Chapter 45 1915 Session Laws
Construed.**

A Board of County Commissioners has no authority to enter into a contract with any person to act as county librarian for any specified time, and a contract of such nature would be void.

Helena, Montana, March 28, 1917.

Mr. W. R. Leet, Chairman,
Board of County Commissioners,
Geraldine, Montana.

Dear Sir:

Regarding the contract entered into September 7th, 1916, between Winifred McLaughlin and the Board of County Commissioners of Chouteau County, under the terms of which Miss McLaughlin was to be appointed County Librarian of Chouteau County for a term of two years at a salary of \$100.00 per month, I have examined the same for the purpose of determining whether or not the Board of County Commissioners had authority to enter into such contract, and whether or not the same is valid and subsisting. Section 3 of Chapter 45, 1915 Session Laws, provides that upon the establishment of a county free library, "the Board of County Commissioners may appoint a County Librarian who may be removed for or without cause." This is the only authority given to the Board of County Commissioners to appoint a County Librarian, and by the term "who may be removed for or without cause", it is clear that it was the intention of the legislature to authorize the removal of the librarian at any time the Board of County Commissioners might see fit to do so. The Board of County Commissioners has no power or authority except that granted by expressed terms or which may be implied from language used.

In the case of *Lebcher v. Board of County Commissioners*, 9 Mont. 315, it is said: "Municipal Corporations or public officers are bound by the law. They are authorized by the law of their creation to make certain contracts. They are creatures of the law, and not of nature. They have not natural rights, but only rights given by law. Their contracts do not obtain validity only by force of the law authorizing their making. It follows that if they make contracts that the law does not

empower them to enter into, there is no authority for such contract, nothing for it to stand upon, and it falls of its own weight. It is void."

This contract was entered into on the 7th day of September, 1916, only a few months prior to the reorganization of the Board when a member thereof, elected in November, 1916, would take his seat, and if a valid contract, the members of the Board organized in 1917, would be bound thereby. It has been held in many cases that Boards of County Commissioners, unless expressly authorized so to do, cannot enter into contracts which will bind succeeding Boards.

In the case of *Jay County v. Taylor*, (Ind.) 23 N. E. 702, where the Board of County Commissioners, shortly before the expiration of their term, made a contract with an attorney to represent the Board for a period of three years during which time the Board would be re-organized three times, it was held that the contract was void as against public policy.

In the case of *Franklin County v. Ranck*, 9 Ohio Cir. Ct. 301, where the Board of County Commissioners entered into a contract for a janitor for the county school house for a term of one year, the contract being entered into shortly before the expiration of the term of one of the members of the Board, it was held that the contract was void, the court saying:

"In the absence of some necessary or special circumstances, showing that the public good required it, such a contract as the one entered into, made by an expiring board, and which has the effect to forestall the action of its successor for a year, is not only evidence of unseemly conduct on the part of the members of the board, but if its object, operation and tendency is calculated to be prejudicial to the public interests, and is against public policy, and void."

In the case of *Milliken v. Edgar County* (Ill.), 32 N. E. 493, it was said:

"If the board had the power to enter into a binding contract of this character for three years, no reason is perceived why it might not make a contract for five or even ten years, and, if this could be done, the hands of succeeding boards would be tied and their powers taken from them."

For the reason that Section 3 of Chapter 45, Session Laws of 1915, grants authority to the Board of County Commissioners to appoint a county librarian and to remove such librarian for or without cause, I am of the opinion that the Board of County Commissioners had no authority to enter into a contract with any person to act as county librarian for any specified length of time, and that, therefore, the contract entered into between Winifred McLaughlin and the Board of County Commissioners of Chouteau County is void, and has no binding effect on Chouteau County.

Respectfully,

S. C. FORD,

Attorney General.