

County Commissioners, Powers—Payment of Claims—Auditor, Not Approved By—Duties Of.

The Board of County Commissioners has no authority to allow and order paid a claim for a greater amount than is approved by the county auditor.

Where the amount of a claim is fixed by law, the Auditor or County Commissioners are without authority to allow it for a greater or less amount.

July 22nd, 1919.

Mr. Carl D. Borton,
County Attorney,
Glasgow, Montana.

Dear Sir:

I regret circumstances have necessitated a delay of an earlier reply to yours of the 14th inst., submitting the proposition as to whether the County Commissioners have the authority and the power to allow and order paid a claim for the full amount which has been disapproved as to the whole thereof, but allowed in part by the County Auditor, when the amount of the claim which constitutes a legal and valid charge against the county can be ascertained from and is fixed by statute.

The circumstances which render an interpretation of Section 3106 necessary are succinctly stated by you as follows:

"To cite instances, I wish to call your attention to a matter in which a resident of this county presented an account against our county which arose out of the killing of a diseased horse afflicted with glanders. The law provides that such horses must be killed, or some other disposition made thereof, and payment made to the owner; the state paying one-half, and the county one-half. The law further provides that the basis of payment must rest upon the assessed valuation of the horse. In this instance the owner gave the assessed valuation of the horse as seventy-five dollars, but in presenting his bill the amount was one hundred dollars. The state paid fifty dollars of this amount, and when the bill was presented to the county for the balance, or fifty dollars, the county auditor disallowed the amount and reduced it to the basis of thirty-seven and 50-100 dollars. The bill was submitted to the county commissioners who disregarded the action of the county auditor and allowed the claim for fifty dollars."

In volume 7 of the Opinions of the Attorney General, on page 144, you will find the following language in reference to the duties of the County Auditor:

"I am, therefore, of the opinion that the County Auditor is not restricted to merely examining and investigating a claim for the purpose of ascertaining whether or not it is a proper charge against the county, but he has the power and it is his duty to examine such claim for the purpose of ascertaining and determining the

reasonableness of the amount charged against the county. But the amount charged is excessive or unreasonable, it is his duty to audit such claim and to allow it for such an amount as he may determine to be a reasonable and proper charge, endorsing on such claim his approval for the amount which he has determined to be a reasonable and proper charge."

Consequently this officer is clothed with some discretion as to the allowance of certain claims, and he may therefore follow the dictates of his judgment as to whether a claim may or may not have his approval endorsed thereon.

But a different rule prevails where the amount of the claim to be paid by the county can be determined and is fixed by some statutory enactment as in the present instance. In such cases the duties of the County Auditor in the discharge of this function of his office become purely ministerial and any act on the part of the Auditor in allowing a sum greater than that fixed by the statute would be in excess of his authority, and would not in any event constitute a legal charge against the county. He is simply required to endorse a perfunctory approval upon the claim for that amount.

The payment of the claim referred to is imposed and determined by law, and such being the case the County Commissioners in allowing it for a greater amount than that fixed by law, which determined the approval of the Auditor, exceeded the scope of their power, and even in the absence of any other restriction arising from the duties and powers of the Auditor, as defined by the statute, they are not to be permitted to exercise a discretionary or quasi-judicial power where not only none is granted but where such is negated. The statute defines the procedure in ascertaining the amount of the claim and that amount when determined is the only valid charge against the county, and no action of the Commissioners can make it greater.

This seems to answer the question presented, but in view of the situation, a construction of the statute is pertinent in reference to the question raised in your letter as to whether the sentence of Section 3106 reading:

"In all counties having a county auditor, no claim against the county shall be paid or warrant drawn therefor unless the same shall have the approval of the county auditor,"

applies to all claims or only to claims for materials.

It might be well to consider how claims against a county may arise or originate; it is doubtless either in the manner mentioned in the following sentence of the section referred to:

"In all counties having a county auditor, all bills, claims, accounts or charges for materials of any kind or nature that may be purchased by and on behalf of the county by any of the county officers or contracted for by the county commissioners shall be investigated, examined and inspected by the county auditor, who shall indorse his approval or disapproval thereon before any warrant for the payment of the same can be drawn,"

or by operation of law or judicial determination, in which case or cases the reasonableness of the claim cannot be determined by the Auditor or County Commissioners if valid in the first instance. In all other cases, as well as in such an instance as cited the auditor must endorse his approval thereon before the same can be allowed, otherwise the procedure outlined in the proviso of the section must be followed.

As a logical result, it might be said that the sentence "In all counties having a county auditor, no claim against the county shall be paid or a warrant drawn therefor unless the same shall have the approval of the county auditor," applies to all claims against the county, though in the one instance the act of the auditor is merely ministerial, and does not alone apply to claims or charges for materials.

The last consideration then is whether the commissioners can allow a claim for a greater amount than that for which the County Auditor has approved the same; clearly they cannot, for this section is mandatory and must be followed in permitting expenditures to be made from the public funds.

In support of this contention, reference is made to the case of *Anderson v. Ashe*, 90 S. W. 372 (Tex.), which has been repeatedly upheld in a number of decisions. The court in the course of the opinion says:

"Second. Did the commissioners' court of Harris County act within its powers in considering and allowing a valid claim against the county which the auditor had audited and refused to approve?"

"To the second and third questions we answer that the county commissioners' court had no power to allow the claim after it had been presented to, examined, and disapproved by the auditor. The Act of the Twenty-Ninth Legislature (Laws 1905, p. 381, c. 161) authorizes the appointment of an auditor in any county in which there may be a city of 25,000 population and provides as follows: 'Section 15. All claims, bills and accounts against the county must be filed in ample time for the auditor to examine and approve same before the meeting of the commissioners' court, and no claim, bill or account shall be allowed or paid until same shall have been examined and approved by the county auditor. It shall be the duty of the auditor to examine and stamp his approval thereon,' etc. Laws 29th Leg. p. 383, c. 161. The language quoted is mandatory, and makes the approval of the auditor a condition precedent to the exercise of jurisdiction over the claim by the commissioners' court. 26 Am. & Eng. Ency. Law, p. 639; *Slayton v. Hulings*, 7 Ind. 144; *State vs. Hilmantel*, 21 Wis. 574. It follows that the order of the commissioners' court allowing the claim, which was made after the rejection of the claim by the auditor, was void, and the auditor was authorized to refuse to countersign the warrant which was issued under such order."

In view of the foregoing, it would seem apparent that the Board of County Commissioners acted beyond the scope of their authority and in excess of their power in allowing the claim for a greater amount than for which it had been approved by the County Auditor.

Respectfully,

S. C. FORD,

Attorney General.