

**County Commissioners, Powers Of—Mortgage Security,  
Farmers, Destitute.**

It is within the discretion of the county commissioners as to whether they should require security for loans under Chapter 8, Session Laws of 1919, made to destitute farmers.

Oct. 10th, 1919.

Mr. H. F. Miller,  
County Attorney,  
Fort Benton, Montana.  
Dear Sir:

I have your letter of August 25th, in which you ask whether or not, under House Bill No. 12, of the Extraordinary Session of the Legislature for the year 1919, or Chapter 8 of the Laws of the Extraordinary Session of said legislature, the county commissioners have the authority to require mortgage security for notes accepted in payment of feed as well as seed grain under the provisions of said bill.

Section 1 of this Act provides that relief may be given to persons residing in the county and finding themselves financially destitute. The commissioners are authorized to supply to such persons seed grain, feed, provisions and other necessary supplies.

Section 21 of the Act makes provisions for the manner in which application for such supplies may be made by persons entitled thereto. Section 22 of the Act provides that the "county commissioners shall constitute a board of examination and adjustment, and shall examine and adjust and approve or disapprove all applications filed under the provisions of this Act." Section 22 further confers a discretion upon the board of county commissioners in the approval or rejection of applications. The whole Act, however, contemplates that all persons, residents of the county, who by reason of the misfortune designated in the Act, and finding themselves financially destitute, are of right entitled to the relief provided in the Act.

Section 23 of the Act designates certain conditions and qualifications. Your inquiry as to whether or not the board of county commissioners have

the authority to require mortgage security for feed and provisions, as well as for seed grain, arises under this section.

The county under this section shall furnish relief to the applicant and in payment must accept his note. In case the person making application is a married man then his wife is required to endorse the note of the applicant. The section further provides that the note shall bear interest at the rate of six per cent per annum "and shall in ordinary cases be due in one year from its date." A proviso is then stated as follows:

*"That in all cases it shall be optional with the board of county commissioners in the exercise of its discretion to authorize the giving of said note for a longer period of time or to modify the conditions of said note in any manner deemed advisable by the board."* (Section 23.)

The section then contains a further proviso to the effect—in case application is made for seed grain—that if the applicant is the owner of land or other property upon which he is able to give security for the relief required, etc., it shall be optional with the board of county commissioners to refuse relief under this Act and require such applicant to apply for relief under Chapter 19 of the Laws of the Fifteenth Extraordinary Session of the Legislature, enacted in the year 1918.

This Act is a relief measure and must be construed so that it will accomplish the purpose for which it was designed. It was designed to assist destitute persons and their families so that they might remain in the county through the winter and cultivate their farms the following year. In administering relief, however, the law always requires good husbandry and county funds must be safeguarded. Under Section 22 of the Act, I am of the opinion that the board of county commissioners has the discretion to reject applications for relief where the applicant has property unincumbered. The Act expressly states in Section 23 that "it is expressly declared that the purpose of this Act is to extend relief to financially destitute persons only." Instances might arise where a person owning property cannot borrow cash on such property, and therefore finds it necessary to ask for relief from the county. In such a case, I am of the opinion that the county board of commissioners has the authority to require security for credit extended. The proviso found in Section 23 reading "that in all cases it shall be optional with the board of county commissioners in the exercise of its discretion \* \* \* to modify the conditions of said note in any manner deemed advisable by the board," gives the board of county commissioners authority to require as one condition of the note referred to, the giving of security and securing the payment of such note.

It is true that one person having no security to offer would be entitled to receive the relief without security, and another person having security might be required to furnish it securing the note. The objection might therefore be raised that in the administration of the law a discrimination between persons would result. Such an objection, however, can be answered with the statement that the board has the discretion to exercise, and even to the extent of refusing relief to one who owns property. The board in its discretion and in the exercise of good husbandry might properly make a reasonable distinction as between classes of individuals, that

is, between those classes who own property and require them to furnish security, and those classes who do not own property and consequently furnish them relief without security for the credit extended.

Respectfully,

S. C. FORD,

Attorney General.