

### County Commissioners, Powers Of — Seed Grain Law, Construction Of.

The county commissioners are vested with a large amount of discretion in the administration of the seed grain law.

Oct. 22nd, 1919.

Board of County Commissioners,  
Mr. A. J. Flynn, Chairman,  
Choteau, Montana.

Dear Sir:

I have your letter of September 19th, in which you raise a question under Section 23, Chapter 8 of the Laws of the Sixteenth Legislative Assembly in Extraordinary Session.

This Act was passed for the purpose of providing bona fide inhabitants of each county with seed grain, feed and provisions, in case such inhabitants, through misfortune of drought, hail or other unavoidable climatic conditions, have been unable to procure the same. (Section 1 of said Act.)

By Section 23 of the Act the Board of County Commissioners compose a board of examination and adjustment. It is made the duty of said board to affirm and adjust and approve or disapprove applications filed under the provisions of the Act. The section provides that the board shall meet and consider separately each and every application filed, and determine who are entitled to receive relief from the county and the amount to which each applicant is entitled. This would therefore indicate that the board is vested with discretion. They must take into consideration the circumstances of the applicant. The board should take into consideration the number dependent upon him and their ability to earn wages, and the opportunity to obtain work. The County Board of Commissioners consist of executive officials of the county and such officials must exercise good husbandry in the disposition of the county funds. The funds set aside for relief under the Act in question are subject to this same kind of supervision.

In Section 23 of the Act further discretion is given to the board where application is made for seed grain. If the county is one in which provision has been made for the distribution of seed under Chapter 19 of the Fifteenth Legislative Assembly in Extraordinary Session, then it is within the discretion of the board to require the applicant to make application for seed grain under such Act. If no such provision has been made the board may require security for the seed grain furnished upon the land of the applicant or his other property. The section also provides that

the applicant shall make, execute and deliver to the county board his note in payment of whatever relief is rendered and that such note shall ordinarily be due in one year from its date, provided, however, that it shall be optional with the board of county commissioners in the exercise of its discretion to authorize the carrying 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.

It will, therefore, be seen that the board is given a large amount of discretion in the administration of this Act. The Act, however, does contemplate the furnishing of relief to the needy inhabitants of each county and it should be made as easy as possible for such inhabitants to obtain relief.

Coming now to the specific question of your letter, as I understand it, I am of the opinion that what you desire to do cannot lawfully be done. The substance of your question is this: Having furnished relief to an applicant under Chapter 8 of the Act, can the county have such applicant do road work for it and the amount of his wages or claim against the county be turned over to the road fund?

It must be borne in mind that each county fund must be handled separately and accounted for by the county treasurer separately. (Section 2986, Code of 1907.) No payments can be made by the county treasurer except on county warrants issued by the county clerk based on orders of the Board of County Commissioners. (Section 2986, Code of 1907.) Every claim against the county must be accounted for under the funds provided for that purpose. In no event could the relief funds be used to pay road work. That is about what the result would be should you do that as to the legality of which you are asking an opinion. In other words, relief having been given, the applicant would be required to work on the county roads and the road fund credited for such work. This cannot be done.

I am of the opinion, however, that where relief is granted, the applicant receiving such relief might work on the county roads and the warrants issued in payment of such work assigned to the county and applied on the claim which the county has against the claimant for relief given. There would be no objection to such a transaction if the claimant will work on the roads. I do not think, however, that the county can or should undertake to force a person to work on its roads in payment of such claims if the applicant cannot reasonably do so. The county commissioners do have considerable discretion and consequently considerable power in the allowance or refusal of relief. By a reasonable exercise of this discretion they might properly suggest to such applicants, it being a proper case, that he do road work in payment of the claim. In this connection, however, it must be borne in mind that the Act contemplates extending relief to the needy and this must not be overlooked in too narrow a safeguard of the county funds.

Respectfully,

S. C. FORD,

Attorney General.