

County Commissioners, Powers of—Eradication of Grasshoppers—Grasshoppers, Funds Not to be Expended for Eradication of.

The county commissioners are without authority to expend county funds for the eradication of grasshoppers.

July 1, 1920.

Mr. W. G. Gilbert,
County Attorney,
Dillon, Montana.

Dear Sir:

This letter is in answer to your inquiry of this morning over the telephone upon the proposition of whether or not the county commissioners of your county have authority to expend county funds in the eradication of grasshoppers, which, I understand, have become somewhat of a menace in your county.

I have given this subject careful consideration, my object being to find authority for the board of county commissioners as requested. I realize the purpose for which they desire to expend county funds is a laudible one and should be encouraged. I do not believe, however, that the commissioners can use the funds of the county for the purpose suggested. The law is that a county board has no power to make apportionment for any purpose other than those authorized by statute. It can not appropriate county funds for other than strictly county purposes or for such county funds for other than strictly county purposes or for such purposes as are expressly indicated by statute or necessarily implied. (15 C. J. 587 Sec. 290). The rule of law upon this subject is also stated in effect that no claims are chargeable on a county treasury nor can they be paid therefrom except such as the law imposes on the county or empowers it to contract for, either expressly or a necessary incident, and no officer of the county can charge it with the payment of other claims, however meritorious the consideration is, or whatever may be the benefit. The county may derive from them. (15 C. J. 562 Sec. 264). It is also said that, except as provided by law, county commissioners or supervisors have no power to create a debt or liability on the part of the county. An indebtedness which was outside of the authority of the county board to contract can not be ratified. Counties being the creature of statute, have no power except those created by statute. (15 C. J. 573 Sec. 277).

In examining the statutes of our state I am unable to find any provision therein which even by necessary implication confers authority upon the board of county commissioners to use the county funds in the eradication of grasshoppers. Section 2894 of the Revised Codes as amended by Chapter 15 of the Session Laws of 1919 invests the county commissioners with general and permanent powers. There is nothing in this section which confers such power as your commissioners desire to exercise.

Section 3199 of the Revised Codes of 1907 enumerates what shall be county charges. I do not find any provision in this enumeration which confers the powers sought to be exercised.

The Supreme Court of our state has had occasion to pass upon Section 3199 in the case of *Sears vs. Gallatine County*. (20 Mont. 462, 52 Pac. 204). In that case the plaintiff sought to hold the county for services rendered as a member of Posse Comitatus. Subdivision 8 of Sec. 3199 declares as a proper charge, "The contingent expenses necessarily incurred for the use and benefit of the county." This is one of the propositions upon which the plaintiff relied but the supreme court held that this provision, "Manifestly restricts the liability of the county to such expenses as may be incurred under statutory authority directly conferred or necessarily implied from the powers granted to the county." It held that the statute made no provision for the payment of service such as the plaintiff served and therefore the county was not obligated therefor. In rendering their decision the court said:

"When the statute imposes upon this or other municipal bodies said duties and expenses in that behalf, they are bound to assume them, but whatever is not thus imposed is not thus assumed. * * * Appellant can not recover upon the theory of an implied power by a county to reimburse and compensate him, for the making of such a contract is beyond the power of a county. * * * One who renders service to the state, for which there is no compensation provided by statute, can not, as in the case of service rendered a private person, raise an implied assumpsit against the state and for such service he has no legal claim—no claim which can be enforced by process of law."

In the case of *Wade vs. Lewis & Clark County* (24 Mont. 335 61 Pac.) In passing upon Section 3199 of the Revised Codes the supreme court said: "What is not by the law imposed as expenses upon a county is not a charge against it."

No provision is found in the statutes authorizing an expenditure of county funds for the eradication of grasshoppers. I am therefore of the opinion that the county commissioners can not disburse the county funds for that purpose.

Respectfully,

S. C. FORD,

Attorney General.