

Counties — County Commissioners — Printing—Precinct Register.

A county printer is not entitled to additional pay for printing names and addresses in precinct registers when he is merely authorized to do so by two members of the Board of County Commissioners when not in session.

T. E. Gilbert, Esq.,
County Attorney,
Dillon, Montana.

My dear Mr. Gilbert:

You have requested my opinion as to whether the county printer is entitled to additional pay for printing names and addresses of electors in precinct registers, such printing not being covered by the contract or statute, but being done by the printer on his own suggestion, with the individual approval of two members of the Board of County Commissioners expressed outside of a board meeting.

I understand that the county printing contract calls for the printing of precinct registers in the exact wording of the statute (Section 4482, R. C. M. 1921), as follows:

“Precinct Registers, one letter to leaf 14x17, each, \$6.00.”

I further understand that the county printer suggested to two members of the Board of County Commissioners, when the Board was not in session, that the names and addresses of the electors in each precinct be printed in the register. This work is usually performed

by the County Clerk, who writes in such names and addresses from the Great Register before sending the Precinct Registers to the various Precinct Election Judges, and the law does not require the names and addresses of electors to be printed in the Precinct Registers.

The printer now claims additional compensation for such printing, amounting to the sum of \$334.90 over and above the statutory and contract price of \$6.00 for each register.

The sole question seems to be whether the approval of the printer's suggestion by two members, which is a majority of the members of the Board, expressed individually and while the Board was not in session, binds the county.

The Board of County Commissioners, deriving its authority from legislative enactment, must look to the statutes for its power. It is a general rule that a county board can act only as a board and not individually. This rule is stated in 15 C. J. 460, and is sustained by a long line of authorities, including the supreme court of Montana in the case of *Williams vs. Broadwater County*, 28 Mont. 360, 72 Pac. 755. In this case the chairman of a Board of County Commissioners individually contracted with an attorney for his services. In holding that such a contract did not bind the county, the court said:

"This board, (County Commissioners), having supervision over the official conduct of all county officers, and generally over all county business, is one of considerable dignity and power; and the statutes contemplate that its meetings shall be held and conducted in an orderly and businesslike way. To bind the county by its contracts, it must act as an entity, and within the scope of its authority. Its members may not discharge its important governmental functions by casual sittings on drygoods boxes, or by accidental meetings on the public streets; and its chairman, unless lawfully authorized by the Board to do some act, or acts, has no more power than has any other member of the Board. The statutes do not vest the power of the county in three Commissioners acting individually, but in them as a single Board; and the Board can act only when legally convened."

This case was followed in the case of *Smith v. Zimmer, et al.*, 45 Mont. 282, 305, 125 Pac. 420, and cited with approval in *Missoula Street Railway vs. City of Missoula*, 47 Mont. 85, 96, 130 Pac. 771.

In the case before us, it is admitted that the Board of County Commissioners did not, acting as a Board, either direct or approve the printing of the names and addresses on the precinct registers. The fact that a majority of the Board, acting individually, voiced approval does not take the case outside the rule of *Williams vs. Broadwater County*. They were speaking individually and not as members of the Board, because they could only speak as members of the Board of County Commissioners when duly and regularly convened as a

Board. Therefore, their individual approval could no more bind the county than could the approval of any other two taxpayers or citizens of the county.

It is, therefore, my opinion that the county is not bound to pay for printing not covered by the contract for county printing but merely authorized by two members of the Board of County Commissioners at a time when the Board was not in session.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.