

### County Commissioners—Gopher Extermination.

The Board of County Commissioners is vested with discretion as to whether it shall appoint a gopher exterminator when a petition is presented to it for the appointment of such person.

A. A. Alvord, Esq.,  
County Attorney,  
Thompson Falls, Montana.

My dear Mr. Alvord:

You have requested the opinion of this office as to whether the Board of County Commissioners is required to appoint persons to exterminate gophers where a petition has been circulated under the provisions of Section 4495, R. C. M. 1921.

While this section authorizes a petition to be presented to the Board of County Commissioners for the appointment of a suitable person, whose duty it shall be to poison, kill and exterminate gophers within the county, yet it does not make it obligatory upon the Board to comply with the petition. The Board may, upon examination of the petition and investigation of the facts, appoint a gopher exterminator. However, the matter is within the discretion of the Board, and, in matters where the Board is vested with discretion, it cannot be compelled to act either favorably or unfavorably on the matter, for this would deprive the Board of its discretion.

It is, therefore, my opinion that the Board may, in its discretion, refuse to appoint a gopher exterminator and the petitioners cannot compel it to make such an appointment.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.