

Agents — Counties — County Commissioners — County Treasurer—County Attorney—Drought Relief — Collections.

County Commissioners may employ agents, if such employment is reasonably necessary, to assist in the collection

of notes given to the county for relief obtained from the county under the provisions of the General Drought Relief Act.

Where suit is necessary on such notes it is the duty of the County Attorney to bring such suit.

Arthur C. Erickson, Esq.,
County Attorney,
Plentywood, Montana.

My dear Mr. Erickson:

You have submitted to this office the question whether the Board of County Commissioners has the authority to employ agents to collect notes given by persons for relief obtained under Sections 4680 to 4711, inclusive, Revised Codes of Montana, 1921, being what is commonly known as the General Drought Relief Act.

By the terms of said Act the persons receiving aid from the county must execute notes to the county and deliver them to the Board of County Commissioners. This I understand was done in your county. The moneys received in payment of said notes must be paid to the County Treasurer whose duty it is to credit the same to the proper fund as directed by the said Act.

The Act does not place upon the County Treasurer the duty of seeing that the said notes are paid. His sole duty is to receive the money when it is paid and to place it to the credit of the proper fund. The administration of the Act was placed in the hands of the Board of County Commissioners, and the Act further provides that the notes when executed to the county shall be delivered to the Board of County Commissioners. There is no direction that thereafter the notes shall be delivered by the Board to the County Treasurer who shall thereafter enforce the collection of them, and I am not aware of any general law that makes it the duty of the Treasurer to perform this office with reference to these notes.

One of the powers and duties of the Board, as enumerated by Section 4465, R. C. M. 1921, is that the Board shall have jurisdiction "to represent the county and have the care of county property, and the management of the business and concerns of the county in all cases where no other provision is made by law." (Subdivision 22.)

That these notes are county property is beyond question. That their collection is part of the business of the county and is of considerable concern to it is clearly beyond denial. No other provision having been made by law whereby the duty of collecting these notes is conferred upon some other officer, it is my opinion that this section places this duty upon the Board of County Commissioners.

The Board of County Commissioners, except where prohibited by law or the Constitution, has implied power to hire employees when such action is reasonably necessary to carry on the business of the

county. The extent of the authority of the persons so employed is that of an employee and not of an officer. The Board has no authority to delegate to the person so employed any of the powers or duties belonging to the Board, the discharge of which involves the exercise of judgment or discretion. He may perform only ministerial duties within the scope of his employment.

The opinion in Volume 9, page 273, Opinions of Attorney General, to which you refer, deals with the Seed Grain Act of 1918. In that opinion it was held that the Board did not have authority to employ such persons because of the fact that the Act itself imposes upon the County Treasurer the duty to collect the moneys due as a tax and in the manner that taxes are collected. It was there held that where the law imposes upon a county officer a duty the Board has no authority to employ others to perform that duty. However, the same situation is not present in the case under consideration, as hereinbefore pointed out, and that opinion is not applicable to the case presented by you.

It is, therefore, my opinion that the Board may employ a person or persons, if such employment is reasonably necessary, to perform ministerial services under the direction of the Board to aid it in the discharge of its duty with reference to the notes in question. All moneys received in payment of said notes should be promptly turned over to the County Treasurer, to be placed to the credit of the proper fund as directed by the Act under which the notes were executed.

In the event, however, that it should become necessary to bring suit to recover on these notes, then it is my opinion that under Subdivision 3 of Section 4819, R. C. M. 1921, it is the duty of the County Attorney, when so instructed by the Board of County Commissioners, to institute such actions.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.