

Counties—County Commissioners—State Entomologist—Expense—Insect Pests.

The county commissioners are not authorized to pay the expenses of the state entomologist incurred in the performance of his duties in eradicating insect pests.

Hon. F. A. Hazelbaker,
Helena, Montana.

February 2, 1925.

My dear Senator Hazelbaker:

You have submitted to this office for my opinion the question whether under the laws of Montana providing for the eradication of insect pests the boards of county commissioners are authorized to pay the expenses of the state entomologist when he is called to a particular county to direct the work of eradication of insect pests.

The general rule is that boards of county commissioners are boards of limited power and can exercise only such powers as are expressly granted by statute or necessarily implied from the powers so granted.

As no express authority to expend the county funds to pay the expenses of the state entomologist is found in the statute if such authority exists it must, therefore, be by necessary implication from the other powers granted.

Section 4501, R. C. M. 1921 authorizes the county commissioners "to appoint some suitable person or persons, whose duty it shall be, acting under the direction of the state entomologist, to poison, kill, catch, and exterminate insect pests."

Chapter 25 of the Laws of the eighteenth legislative assembly, which amends several sections of the codes of 1921 relative to the subject of insect pests, provides the compensation for such persons, empowers the county commissioners to purchase poison, traps, etc., and for the levying of a tax for the payment of the same.

It will be observed also that section 916, R. C. M. 1921 provides for the payment of the expenses of the state entomologist by state appropriation and an examination of the various session laws shows that an appropriation has been made for that purpose from time to time.

Considering the statutes above as a whole it seems clear that the intent of the legislature was that the expenses of the state entomologist

should not be paid by the counties and that no power to pay the same can be necessarily implied from the laws authorizing the county commissioners to eradicate insect pests, and it is, therefore, my opinion that no such power exists.

Very truly yours,

L. A. FOOT,
Attorney General.