

Seed Grain—Drought Relief—County Commissioners—Contracts—Collections—Employment.

The board of county commissioners has no authority to contract for the collection of money due on loans made under the act of 1918, but may employ help to collect money loaned under drought relief act of 1919, but such help should be employed in the capacity of deputy county officers and paid accordingly.

A contract to collect money due on loans made under these acts is a delegation of authority and contrary to public policy and therefore illegal.

R. M. Hattersley, Esq.,
County Attorney,
Conrad, Montana.

June 9, 1925.

My dear Mr. Hattersley:

You have requested an opinion as to the legality of a certain contract wherein the county of Pondera is the party of the first part and V. M. Smith the party of the second part, which contract provides for the employment of V. M. Smith by the county on a commission basis for the purpose of collecting the money due the county on loans made under the seed grain and the relief acts.

From an examination of the contract it appears that the money to be collected includes money loaned under the seed grain act of 1918 and also under the drought relief act of 1919.

In regard to the money loaned under the seed grain act of 1918 it was held in an opinion by former Attorney General Rankin, volume 9, page 275, opinions of the attorney general, that the board of county commissioners had no authority to employ an agent for the purpose of collecting money due on these loans because of the fact that the act itself imposes upon the county treasurer the duty to collect the money due as a tax and in the manner that taxes are collected, and where the law imposes upon a county officer a duty the board has no authority to employ others to perform that duty. This opinion is supported by good authority and I am in full accord with it.

This does not apply, however, to money loaned under the drought relief act of 1919 for the reason that this act does not place upon the county treasurer the duty of seeing that 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 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 thereupon enforce the collection of them, and there is no 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 it 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 provisions having been made by law whereby the duty of collecting these notes is conferred upon some other officer 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 supreme court of California under statutes similar to ours in the case of Scollay vs. County of Butte, 7 Pac. 661, which involved a contract for the collection of bonds owned by the county, under terms practically the same as those included in the contract in question, said:

"While counties have power under the statute to contract for the collection of the county property the board of supervisors, in the exercise of such power, is not authorized to delegate it to others to determine whether to commence a suit, and to select attorneys and prosecute the same, nor to make a compromise or settlement dependent on the written consent of strangers, and that contracts so attempting to delegate such powers are ultra vires."

Many of the courts have also held that contracts providing for the collection of public funds on a commission basis are contrary to public policy and therefore void.

The supreme court of Kansas in the case of *State ex rel Coleman vs. Fry*, 95 Pac. 392, involving a contract for the uncovering of property which had escaped taxation, said:

“Probably no board of county commissioners which ever made a contract such as is involved in this action anticipated the methods that would be employed under it. They probably had not studied the iniquities which have at all times grown up under every system that has been in vogue of farming out the collection of the public revenue. The experiences of the past, however, have been such that it is impossible to contemplate any civilized community, with a knowledge of its history, again reviving the odious practice. The contract is not only void for want of authority, but as being against public policy.”

See also *Platte County vs. Gerrard*, 12 Neb. 244.

It is, therefore, my opinion that the board may employ a person or persons, if such employment is reasonably necessary to perform ministerial service under the direction of the board, to aid in the discharge of its duties with reference to the loans made under the drought relief act but such person or persons should be employed in the capacity of deputy county officers and subject to the same restrictions as to salaries as other deputies, and in the event that it should become necessary to bring suit to recover on these notes, under subdivision 3 of section 4919, R. C. M. 1921, it is the duty of the county attorney, when so instructed by the board of county commissioners, to institute such action. Further, that the contract in question is illegal both as being a delegation of authority and also as being contrary to public policy, and that if the party of the second part is allowed to perform services under said contract that the payment of his commission thereunder would be subject to being enjoined by the taxpayers.

Very truly yours,

L. A. FOOT,
Attorney General.