

**Budget—County Commissioners—Clerks—Employment.**

The county commissioners may not legally employ a "Clerk of Cost System for Commissioners" for the purpose of keeping a special cost system for the expenditure of road moneys, and pay the salary of such clerk out of the county commissioners' budget.

J. S. Cook, Esq.,  
County Auditor,  
Great Falls, Montana.

February 27, 1926.

My dear Mr. Cook:

You have submitted to me the following statement of facts and request for opinion:

The county commissioners of Cascade county have installed as a part of the county records a special cost system for the purpose of keeping track in minute detail of the expenditure of moneys on the public roads. For the purpose of keeping this cost system they have employed a man at a salary of \$150, \$50.00 of which is paid by the county surveyor's office out of its budget and the remaining \$100 is paid out of the county commissioners' budget. The official designation of this employee is "Clerk of Cost System for Commissioners."

You desire to know whether it is legal for the commissioners to so employ this person and to pay him out of the commissioners' budget. You have given me no facts from which I can determine whether the commissioners have an allowance under the county budget law (section 228 R. C. M. 1921) which can legally be expended for this purpose. I shall not, therefore, attempt to pass upon this phase of the question.

Under section 4874 of the code as amended by chapter 82, laws of 1923, boards of county commissioners are given very broad powers in the way of authorizing the employment of deputy county officers and assistants to other county officers when necessary for the faithful and prompt discharge of the duties of any county office. It must be borne in mind, however, that boards of county commissioners are of limited power (State vs. Coad, 23 Mont. 131) and must in every instance justify their actions by reference to the provisions of law defining and limiting their powers. The county clerk and recorder is the clerk of the board of county commissioners. Doubtless the commissioners may, under section 4874, supra, authorize the county clerk and recorder to employ an extra deputy or assistant to do the above work if, in the judgment of the board, such extra clerk is necessary to enable the county clerk and recorder to faithfully and promptly discharge the duties of his office.

Nowhere in the statute do I find any provision of law which authorizes the board of county commissioners to employ another clerk for itself or to create an office such as the "Clerk of Cost System for Commissioners."

It is, therefore, my opinion that the board of county commissioners possesses no authority to employ the person above designated as an extra assistant or employee of the board of county commissioners and it follows that the commissioners have no authority to authorize the employment of this person in their own office or to approve the payment of his salary or any part thereof out of the commissioners' budget.

Very truly yours,

L. A. FOOT,

Attorney General.