

**Budget Law—County Commissioners—County Attorney—
Special Agents—Prohibition Enforcement.**

Where the amount allowed in the county budget for the payment of special officers and detectives has been exhausted the county commissioners may allow and pay claims for such services if in their judgment an emergency exists or there is just cause for the employment of such officers.

J. A. Barker, Esq., December 1, 1924.
Acting Chairman, Board of County Commissioners,
Great Falls, Montana.

My dear Mr. Barker :

You have submitted to this office for my opinion the following question :

“Where the amount allowed in the county budget for the payment of special investigators for the enforcement of the laws relating to intoxicating liquors has been exhausted, has the board of county commissioners the authority to expend any sum in excess of that appropriated in the budget for the payment for such services rendered at the request of the county attorney?”

There is no doubt that the county attorney is authorized to employ special investigators and detectives for the purpose of obtaining evidence of violation of the prohibition laws of the state, as well as other criminal laws, and to make such service a charge against the county.

Vol. 8, Opinions of Attorney General, page 173 ;
Vol. 8, Opinions of Attorney General, page 270.

Section 228, Rev. Codes 1921, provides as follows:

“Each and every and all county officers, institutions and agencies, including boards of county commissioners, shall be limited in their expenditures for the fiscal year for which such budget was made, to the amount and in the manner as in such budget, as finally approved, shall be set forth; provided that should any emergency or just cause arise for the allowance of a greater sum or sums for any particular office, officer, institution or agency of the county, and the county commissioners shall have determined that such is an emergency or just cause for the allowance of the additional amount, they may permit expenditures to be made for such emergency or just cause and include the same in their estimate for tax levy in the succeeding fiscal year.”

From this section it is evident that the expenditures are limited to the amounts fixed in the budgets of the various officers; provided, however, that should an emergency or just cause for the allowance of a greater sum to the particular officer or agency in question arise, and the county commissioners shall have determined that there is an emergency

or just cause for additional expenditures, they may permit such additional expenditures and include the same in the levy for the succeeding fiscal year.

Whether an emergency exists or whether there is just cause, within the meaning of the law, is a question that addresses itself to the sound discretion of the county commissioners. It would seem, however, that as the county attorney is charged with the prosecution of violations of the criminal laws and as he is authorized to employ the special investigators and make the charges for such services a county charge, that if in his judgment the services of such men are necessary to properly prosecute violations of the criminal laws, that just cause exists which would authorize the county commissioners to appropriate a sum greater and in addition to that allowed for that purpose in the budget in the first instance.

It is, therefore, my opinion that, even though the amount allowed in the budget for the payment of special officers and detectives has been exhausted, the county commissioners may allow and pay claims for such services if an emergency exists, or if, in their judgment there is just cause for the employment of such officers.

Very truly yours,

L. A. FOOT,
Attorney General.