

Franchises—Public Utilities—County Commissioners.

A board of county commissioners possesses no authority to grant a franchise to a public utility corporation for the laying of its pipes or mains in an unincorporated community.

Public Service Commission of Montana,
Helena, Montana.

December 27, 1926.

Gentlemen:

You have requested my opinion on the following question:

“May the board of county commissioners of any county grant a franchise or permit by resolution, or otherwise, to a public utility corporation, extending to such corporation the right and privilege of laying its gas pipes, water mains, or electric lines in an unincorporated community? If so, must the franchise be limited to a term of forty years?”

A board of county commissioners is one of limited powers and can exercise only those powers expressly delegated to it by law or those necessarily implied from the powers expressly delegated.

It must therefore justify its every act by reference to the provisions of law defining and limiting its powers. (State ex rel. Lambert v. Coad, 23 Mont. 131; State ex rel. Gillette v. Cronin, 41 Mont. 293).

I am unable to find in the statutes of Montana any delegation of authority to boards of county commissioners to grant a franchise or permit of the character designated in your inquiry.

Section 4465, as amended by chapter 95, session laws of 1923, defines the general and permanent powers of boards of county commissioners and contains no delegation of authority for the granting of franchises. It is true that subdivision 4 of the section above referred to gives the board the authority to "lay out, manage and control public highways."

Assuming, however, that the pipelines, water mains and electric lines referred to in your letter were constructed along or upon public highways, I do not find any authority for the granting of the right to use the public highways for such a purpose by the county commissioners.

In the case of State ex rel. Spring Water Co. v. Town of Monroe (Wash.) 82 Pac. 888, the court said, referring to a Washington statute similar to ours above quoted:

"The privilege of laying water pipes along or under a public highway would seem to be wholly foreign to any express or implied power conferred by the above statute.

"In Great Britain express legislative sanction is necessary to warrant the laying down of gas pipes in the public highways, and so, in this country, it is also considered that the right to the use of the public streets for the purpose of laying down its pipes, is a franchise which can be granted only by the legislature or some local or municipal authority empowered to confer it." (Dillon Municipal Corp., 4th Ed., section 691).

"The same principle applies to water pipes and sewers." (Id., section 697.)

It is therefore my opinion that your first inquiry must be answered in the negative which renders it unnecessary to pass upon the second question presented.

Very truly yours,

L. A. FOOT,
Attorney General.