

**County Commissioners—County Officers—State Examiner—Accountant.**

Boards of county commissioners have authority to employ an accountant in counties not having an auditor to make an audit of the books of county officers when such is reasonably necessary for the board to discharge its duties under paragraph 1 of Section 4465 R.C.M. 1921, notwithstanding the fact that the information thus procured might likewise be obtained by the state examiner in the discharge of his official duties.

If such state examiner has already acquired such information the employment of an accountant would not be necessary to the discharge of the board's duties. Where an original audit is required to obtain such information the commissioners are not obligated to call upon the state examiner to make a special examination.

R. N. Hawkins, Esq.,  
Assistant State Examiner,  
Helena, Montana.

August 21, 1929.

My dear Mr. Hawkins:

You have requested an opinion of this office whether a board of county commissioners has authority to employ an accountant in counties not having an auditor, at a given compensation, to make an audit of the books of its officers.

Paragraph 1 of Section 4465 R.C.M. 1921, provides as follows:

"To supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, charged with assessing, collecting, safe keeping, management or disbursement of the public revenues; see that they faithfully perform their duties; direct prosecutions for delinquencies; and, when necessary, require them to renew their official bonds, to make reports, and to present their books and accounts for inspection."

This language was taken from Section 4 of the County Supervisors' Act of 1893 of the State of California. In the case of Harris vs. Gibbons, 46 Pac. 292 the precise question you ask was presented to the Supreme Court of California. The court in its opinion said:

"It is difficult to conceive how a board of supervisors, in its capacity as a body corporate and politic, could expert books, or be an expert accountant, and yet the experting of books seems to be necessary to that supervision of county officers which the law expressly imposes upon such Board. Power to accomplish a certain result, which evidently cannot be accomplished by the person or body to whom the power is granted, without the employment of other agencies, includes the implied power to employ such agencies; and in such case, when the law does not prescribe the means by which the result is to be accomplished, any reasonable and suitable means may be adopted."

It is therefore the opinion of this office that a board of county commissioners may employ an accountant to audit the books of the county officers where there is no county auditor when such employment is reasonably necessary to the discharge of its duties under Paragraph 1 of Section 4465, supra.

You further request the opinion of this office as to whether a board of county commissioners may employ an accountant or other persons, at a fixed compensation to perform duties that by statute are required to be done by the state examiner. I assume by this question you mean if such employment may be made when in the performance thereof information is to be supplied to the board which could be acquired by the state examiner when and if he made a regular or special examination of the affairs of the county as it is inconceivable that the board of county commissioners would employ someone to perform the official duties of the state examiner. As stated before, the county commissioners have such power when the purpose is to assist them in the performance of the official duties of their office and such employment is reasonably necessary even though the state examiner may likewise obtain such information in the discharge of his official duties. However, if the state examiner has already acquired such information prior to such employment and such information is available to the county commissioners, the employment of a person to procure it could hardly be said to be necessary to the discharge of their said duties. However, where the information can only be obtained by an original audit there is no obligation upon the county commissioners to call upon the state examiner to make a special examination, as such examination rests in the discretion of the state examiner and he could not be compelled to make it at the instance of the board of county commissioners.

Very truly yours,

L. A. FOOT,  
Attorney General.