

**Opinion No. 175****Officers—Salaries—Public Policy—  
County Commissioners—Claims—Justices of the Peace—Fees.**

HELD: An agreement of a public officer to accept less than the salary allowed by law is contrary to public policy and void. Whether the officer may recover the unpaid part of his salary—not decided.

Under the facts presented, the Board of County Commissioners did not exceed its powers in allowing an expense claim of nine dollars presented by one directed by the Board to attend a meeting of the Federal Power Commission to protect the interests of the County.

Justice of the Peace may charge only those fees which are set forth in the statutes.

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April 21, 1933.

You inquired about the propriety, or otherwise, of a public officer accepting or agreeing to accept less than the salary allowed him by law. The rule is well settled that an agreement of such a character is contrary to public policy and void. The compensation having been fixed by statute can only be changed by statute. (*Hicks v. Stillwater County*, 84 Mont. 38; *Mechem, Public Officers*, Sections 372, 377; 13 C. J. 441, 442, and Supps.) We do not wish to be understood, however, as saying that in any event and under all circumstances the officer may recover the unpaid part of his salary, for, it seems, there are exceptions to nearly all rules. (See *Boyle v. Ogden City*, 68 Pac. 153; *Harvey v. Tama County*, 53 Iowa 228; *Mechem, Public Officers*, Section 372; *Opinion No. 110*, this vol.)

It appears further from your letter that one W. F. Jellison, a competent man presumably, was authorized and directed by the board of county commissioners of Flathead County to attend a meeting of the Federal Power Commission held at Polson for the pur-

pose of considering power sites, dams, etc., and received from the county his expenses amounting to about nine dollars. The circumstances requiring his presence at the meeting were that the county has and had a large amount of money invested in roads in what is known as the Lower Valley and that if the Montana Power Company, or one of its subsidiaries, were permitted to dam the waters in that vicinity to a certain height there would be danger of flooding these roads. We think the allowance and payment of Mr. Jellison's claim was, under the facts as stated, proper, and particularly so as the duty of attending the meeting was not cast by law on the county surveyor or any other officer. (See *Judith Basin Co. v. Livingston*, 89 Mont. 438).

The board of county commissioners of a county is vested with and possesses just such powers as the statutes confer upon it and such as are necessarily implied to enable it to carry out the objects and purposes of its creation. In general, the board is charged with the duty of managing the affairs and business of the county and of making contracts necessary and incident to such management. (7 R. C. L. 938, 943).

Except as otherwise provided by law, a board of county commissioners ordinarily exercises the corporate powers of the county. It is in an enlarged sense the representative and guardian of the county, having the management and control of its property and financial interests, and having original and exclusive jurisdiction over all matters pertaining to county affairs. Within the scope of its powers, it is supreme, and its acts are the acts of the county. It is well settled, however, that a county board possesses and can exercise such powers, and such powers only, as are expressly conferred on it by the Constitution and statutes of the state, or such powers as arise by necessary implication from those expressly granted, or such as are requisite to the performance of the duties which are imposed on it by law. (*Arnold v. Custer County*, 83 Mont. 130; *State v. Kuhr*, 86 Mont. 377; *Simpson v. Silver Bow County*, 87 Mont. 83; 15 C. J. 456-458).

The Board of County Commissioners is in a sense the general business agent of the county, and as such has charge

of its financial affairs and business as to such matters as are not expressly or by necessary implication delegated by law to other officers of the county or as are not reserved to the people. (State ex rel. Coleman v. Fry, 95 Pac. 392).

In the State Examiner's report covering the affairs of Flathead County appears the following paragraph:

"Claim No. 82181 of Justice of the Peace McCarthy was paid in the amount of \$23.50, though approved by the county attorney in the amount of \$16.00. We are unable to determine the correctness or incorrectness of this claim, but most certainly some one is wrong in the matter."

You comment and elaborate on it in this language:

"The examiner's report covers claim 82181 of Justice of the Peace McCarthy. I filed before McCarthy a complaint charging four defendants jointly with burglary. Two were dismissed without a hearing and two were bound over without a hearing. McCarthy put in a claim for \$10.00. I cut it to \$2.50. The examiner states that he is unable to determine the correctness or incorrectness of the claim",

and then inquire of us if we can determine the correctness of the claim for the examiner. At first blush the thing looked very much like a Chinese puzzle, but we may assume, in order to bring about some measure of reconciliation between the figures given, that the venerable jurist rendered public service, other than that mentioned, for which he claimed compensation in addition to the Ten Dollar charge. If we adopt that theory it is reasonably certain that your position was correct and that he should have had not \$23.50 but only \$16.00. (Section 4926 Revised Codes 1921; State ex rel. Rowe v. District Court, 44 Mont. 318; State ex rel. Rowe v. District Court, 45 Mont. 205; 46 C. J. 1017, 1018; Brannin v. Sweet Grass Co., 88 Mont. 412).