

**Opinion No. 29****County Commissioners—Worthless  
Accounts—Counties.**

HELD: The board of county commissioners has the power to charge off worthless accounts.

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January 17, 1933.

You have requested my opinion on the following matter: "There are a large number of counties in Montana that have been carrying for some time as cash, the amount of deposits in

closed banks in which there is no possibility of recovery from the assets of the bank or from the bondsmen. These assets as carried are fictitious and should be charged off. In many cases the receivers of the banks have been discharged and there is no hope whatever of further collections. Will you kindly advise us if the county commissioners have authority to charge off these items or such other method and regulation which they may prescribe, or is this a matter that the county commissioners cannot regulate and will it require a bill to be passed by the legislature?"

Section 4441 R. C. M. 1921 provides as follows: "Every county is a body politic and corporate, and as such has the power specified in this code, or in special statutes, and such powers as are necessarily implied from those expressed."

Section 4442 provides: "Its powers can only be exercised by the board of county commissioners, or by agents, and officers acting under their authority, or authority of law."

Section 4444 provides: \* \* \* "4. To make such orders for the disposition or use of its property as the interests of its inhabitants require. \* \* \*"

Section 4465 R. C. M. 1921 as amended by Chapter 95, Laws of 1927 and Chapter 38, Laws of 1929, among other general and permanent powers granted to the board of county commissioners, sets forth the following: "22. To represent the county, and have the care of the county property, and the management of the business and concerns of the county in all cases where no other provision is made by law." "25. To perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government."

In view of the foregoing express powers given to the county and the county commissioners, we are of the opinion that the county commissioners have the power to charge off fictitious or worthless accounts and that no action by the legislature is required to accomplish this purpose.

Such action does not in any way affect the debt due from the closed banks nor the relation of the parties as debtor and creditor. Such action as may be necessary, effective or advisable to collect the debt may still be taken. No rights of the county are in any way waived. The contemplated action merely concerns the bookkeeping of such accounts and is the natural action which any business concern would take in regard to a claim which was considered to be worthless. The county commissioners being charged with the care of the county property and the management and business concerns of the county and being the chief executive authority should, and we believe do have the power to charge off worthless accounts and to have the records of the county express the true condition or status of the county assets.

As to the duty to restore trust funds, if any are included in the deposits of closed banks, our Supreme Court has ruled thereon in *State ex rel. School District No. 4, Rosebud County vs. McGraw*, 74 Mont. 152, 240 Pac. 812. Neither that duty, the ability to discharge it nor the advisability of discharging it are in any way affected by the action of the county commissioners in charging off a worthless account.