

gation district to be financed by the Federal Government under the National Industrial Recovery Act.

September 14, 1933.

You have requested my opinion "whether or not the county commissioners of Custer County have the power, under the provisions of Chapter 44 of the Laws of 1933, to retain an irrigation engineer for the purpose of making a preliminary survey and securing data for the construction of an irrigation project in Custer County with public works funds."

It is, of course, conceded and recognized by all authorities that the county commissioners have only such powers as have been expressly granted to them by the legislature or which may reasonably be implied from the duties placed upon them. No express power has been granted by the legislature to employ an engineer, or any other person, for the purpose of making preliminary surveys and securing data in the construction of an irrigation project, which the government requires in order to determine whether the project is feasible and should be undertaken under the public works program of the National Industrial Recovery Act.

The commissioners are charged with no duty by statute to construct, or help construct irrigation projects and hence there can be no implied power to employ an engineer for that purpose.

Chapter 44 was approved by the governor and became effective on March 4, 1933, before the passage of the National Industrial Recovery Act. Conceding, without deciding, that that act may be legislation similar in some respects to the Reconstruction Finance Corporation, although the aid insofar as it pertains to its program of public works, is of a different character, the purpose of Chapter 44 as expressed in its title, as well as in Section 1, is to give the county commissioners power to "employ the necessary help and incur such expenses as are necessary in the administration of such relief." It is not absolutely certain that aid will be granted under the N. I. R. A., for if it were certain, there would be no need for securing the services of an engineer to make a preliminary survey and secure data. Before relief has been granted or determined upon there can be no

Opinion No. 336

**County Commissioners—Irrigation
Projects—Engineer—National
Industrial Recovery Act.**

HELD: County commissioners have no power to retain an irrigation engineer for the purpose of making a preliminary survey of a proposed irri-

administration of such relief, and the employment of help and the incurring of expenses in the administration thereof, is not necessary. The relief received from the Reconstruction Finance Corporation consisted of funds, for the proper distribution of which it was necessary to employ help and incur expenses.

It is my opinion that it was the intention of the legislature to give the county commissioners power in said Chapter 44 to employ help and incur expenses in administering relief after such relief had been obtained and that they have no power under such act to employ help or incur expenses in order to convince the Federal Government that the proposed public work is feasible and should be undertaken.

You enclose a letter signed by members of the local unemployment committee, calling attention to the benefits to be derived from the proposed irrigation project, as well as the expected resulting relief for the unemployed of the county who are now receiving relief from the county and the Federal Government. The argument made is indeed forceful and were I vested with the power of discretion, I should undoubtedly be moved to act accordingly. My sworn duty is, however, to uphold the law and to construe it honestly, fearlessly and correctly, having in mind that the powers of the county commissioners throughout the state should not be enlarged by judicial construction, however desirable in the present emergency, as that is properly the function of the legislature. See *Sullivan v. Big Horn Co.*, 66 Mont. 45.