

Opinion No. 515**County Commissioners—Highways
—Joint Maintenance of Roads
—Counties, Roads in Another
County.**

HELD: Boards of County Commissioners have the power to act **jointly** in laying out, controlling and maintaining public highways in adjacent counties. But it is extremely doubtful that a board of county commissioners is vested with power to act alone to improve or keep in a state of repair that part of a highway running from that county into another, which lies in the latter county.

April 18, 1934.

We acknowledge receipt of yours of the 20th advising that one of your important roads leading into Livingston extends into Sweet Grass County; that Sweet Grass County refuses to keep the part of such road in that county in condition suitable for travel, and your board of county commissioners desires to know whether it has the power to expend money to maintain that part of the road in Sweet Grass County. It

also appears from the accompanying map that this road is a way of necessity to Park County for the reason that it is the only convenient roadway to interior portions of Sweet Grass County, otherwise practically inaccessible.

Section 4465 R. C. M. 1921 contains the general legislative grant of powers to the board of county commissioners. The section has been frequently amended but the section now in force is as amended by Chapter 100, Laws of 1931, with a minor amendment in 1933 not pertinent here.

Subsection 4 of said section 4465 provides as follows: "To lay out, maintain, control and manage public highways, ferries and bridges, within the county, and levy such tax therefor as required by law; provided, however, that they may in the exercise of a sound discretion, jointly with other counties, lay out, maintain, control, manage and improve public highways, ferries and bridges in adjacent counties, wholly or in such part as may be agreed upon between the Boards of County Commissioners of the counties concerned, and levy taxes therefor as provided by law; and where joint highway or bridge construction projects are contemplated or necessary and the cooperation of another county, or other counties, or the State or Federal Government, or either or both, is desired for the construction of such projects they may enter into agreement for adjusted annual contributions over not to exceed six years, toward the cost of such projects, and they shall be authorized to place the same in their budget and levy taxes as according to law."

This provision of the statute vests the power in the boards of the counties affected to act **jointly** in laying out, controlling and maintaining such roads.

In view of the provisions of Chapter 59, Laws of 1929, and of Chapter 180, Laws of 1931, it is extremely doubtful that the board of county commissioners of Park County is vested with authority to go it alone and improve or keep in a state of repair that part of a highway running from Park County into Sweet Grass County, which lies in the latter county.