

Opinion No. 62**Contracts—County Commissioners—
County Printing.**

HELD: The power of the Board of County Commissioners to make valid contracts may be exercised at any time during the term of the board when a prior contract for such work has expired or is about to expire, though the exercise of such power may savor of bad faith or even of fraud, providing the meeting of the board at which such power was exercised was legally called and held.

February 4, 1933.

You have requested my opinion on the legality of the printing contract purported to have been let by the board of county commissioners on December 23, 1932. You have furnished copies of the minutes of the board of county commissioners of December 17, 1932, and December 23, 1932, in which reference is made to the printing contract.

The power of the board of county commissioners to make contracts for county printing is based upon subdivision 20 of section 4465, R. C. M. 1921, (as amended thereafter, the last amendment being by chapter 100, Laws of 1931), and by section 4482 R. C. M. 1921, (as amended by Chapter 10, Laws of 1929).

In the case of *Picket Publ. Co. v. Board of County Commissioners*, 36

Mont., 188, the question of the power of a board of county commissioners to enter into a contract at a time that the term of some members of the board is about to expire, is quite fully considered and is regarded as a ruling case in Montana on this point so far as the duties of a board of county commissioners is concerned, and from that decision we quote as follows:

"The power to make the contract is specifically granted; but the time when such power shall be exercised is not limited or prescribed. Therefore we say that the proposition is incontrovertible that it may be exercised at any time during the term of the board, when a prior contract for such work has expired or is about to expire, and, so far as the power of the board is concerned, it is just as ample and complete the last week of the board's official existence as at any time prior thereto. The making of such a contract at a time near the close of the official career of an outgoing board may, in some instances, savor of bad faith or even of fraud."

Under the provisions of the statute, as interpreted by this decision of our Supreme Court, it is the opinion of this office that the board of county commissioners of Phillips County were empowered to make the contract for the county printing at the December meeting, if such meeting was legally called and held.

Section 4462, R. C. M. 1921, as amended by Chapter 35, Laws of 1929, provides that special or extra meetings of the board of not more than two days' duration may be held at any time by giving at least two days' posted public notice of such meetings. There is nothing in the copy of the minutes of the meeting of December 17 as submitted by you, nor in a copy of the minutes of December 23 as submitted by you that refers to anything about the notice having been given.

If there is nothing on the minutes of the county commissioners referring to the fact, and making the same a record, that the notice was given as required by the statute, a legal meeting could not be held. (See opinion No. 99, this volume.) When any extra or special meeting is called by the board, it is our opinion that the facts about such

meeting being called according to statute must be entered on the minutes of the special or extra meeting so that the record will show that the meeting has been legally called and held. In the absence of such statements set out in the minutes, it is our opinion that such meeting would not be legal.

In the minutes of the meeting of December 17, the statement is made that "it was the unanimous decision of the board that contract for 1933 and 1934 printing is awarded to the Phillips County News, unless a check-up of the figures submitted by both bidders at the meeting of January 3, 1933, show a material difference between the figures submitted here today and the figures to be submitted on that date."

The meeting of December 23, 1932, follows, the minutes of which stated: "The bidders having been instructed on December 17, 1932, to get together and check up on the figures on December 19 and 20, and no check up having been made".

The board then proceeds to award the contract to the Phillips County News, admitting that the figures submitted by the Saco Independent for the printing contract were a few hundred dollars less.

There is a conflict in the minutes of December 17 and the minutes of December 23 in that the minutes of December 17 appear to grant to the bidders the time until January 3, 1933, to make up their re-check and submit their figures and it does not appear why they cut the time short and called the second special meeting of December 23 without waiting for the full time to expire as they had provided in the December 17 meeting.

Whether the contract let by the board of county commissioners on December 23 is legal or not, depends upon the legality of the particular meetings both of December 17 and December 23, and the evidence submitted to us is not sufficient to determine these questions. Before this office can give you an opinion we must have the information as to the manner in which these meetings were called, and, as above stated, if they were not called and held according to the statutory provisions, they were not legal and any action taken by the board at such meetings would not be binding on the county or any one else.