

Opinion No. 63**County Commissioners—Claims—Road Inspection—County Budgets.**

HELD: The claims of members of the Board of County Commissioners for services rendered as inspectors of the highways are properly rejected when the claims exceed the appropriation for the purpose in the budget and where they do not arise from an emergency provided for in advance of the expenditure in the manner set out in Chapter 148, Session Laws of Montana, 1929.

February 6, 1933.

You have requested my opinion on a bill of yourself for \$123.50 and one of Mr. J. D. Loudon for \$73.82 against Flathead County for services rendered by you and Mr. Loudon respectively, as inspectors of the highways in your respective districts. In your letter of transmittal you state that the county attorney has taken the position that these claims are not valid, and you ask for an opinion of this office as to that question. Your letter does not make it quite clear whether your difficulty lies in not having sufficient actual funds, or whether the claims exceed the appropriation for the purpose in the budget. If the claims exceed the appropriation in the budget, then we think they cannot be allowed.

The only authority in our statutes for members of the board of county commissioners to inspect highways and highway work is contained in section 1632, R. C. M. 1921, as amended by chapter 176, Laws of 1929, on page 358.

Under that statute, it is our opinion that your claims are regular and might have been legally authorized as an obligation of the county if it were not for the fact that the payment of such claims would exceed the amount provided for in your official budget for this purpose for the fiscal year ending June 30, 1932. Appropriate action to authorize such claims was necessary in advance. On page 294, in the last paragraph beginning on that page and extending on to page 295, provision is made by which the budget may be exceeded to meet certain emergencies and one of such emergencies is "mandatory expenditures required by law". We believe that under this clause, claims

such as you and Mr. Loudon have made against the county might be allowed if the emergency were provided for in advance of the expenditure in the manner set out in the act referred to above, but it does not apply to expenditures already made and we know of no manner in which you can legally obtain payment for these claims.

When work of this nature is done in good faith, and there is no occasion for any different conclusion in the matter that you present, it is unfortunate that the individual has to suffer for the benefit of his county but by the provisions of the budget law as it is now upon our statutes, we can discover no way by which you may legally have these claims allowed.