

**Opinion No. 250.****County Commissioners—Compromise  
of Indebtedness—Warrants—Cities  
and Towns.**

HELD: Where warrants of a city or town were properly presented to the proper officer for payment and not paid for want of funds, the county commissioner is without power to compromise and waive the interest due on the warrants.

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February 11, 1936.

Board of County Commissioners  
Silver Bow County  
Butte, Montana

Your letter of January 9 reads as follows:

"Enclosed please find opinion rendered us by the County Attorney's office regarding the acceptance of payment on warrants of the City of Walkerville given for costs of elections minus accrued interest on such warrants.

"Will you please send us concurrence in this opinion, and also return the enclosed opinion from the County Attorney."

The opinion of the county attorney reads as follows:

"You have requested the opinion of this office on the question as to whether or not the county may accept payment on warrants of the City of Walkerville given for the cost of elections minus accrued interest on such warrants.

"It is our opinion that the County may compromise this indebtedness due it by accepting the face value of the warrants without the accrued interest."

Section 4465, Revised Codes 1921, as amended by Section 1 of Chapter 100, Laws of 1931, prescribes the powers and duties of the Board of County Commissioners. It is well settled that the Board is a body of limited jurisdiction and, before a power may be exercised by it, the authority for the action must be found written in the law, or it must be clearly implied from some express grant of power. (*State v. Cronin*, 41 Mont. 293.) The Board may exercise only such powers as are expressly conferred upon it or which are necessarily implied from those expressed, and where there is a reasonable doubt as to the existence of a particular power, it must be resolved against the Board and the power denied. (*Yellowstone Packing Co. v. Hays*, 83 Mont. 1; *Lewis v. Petroleum County*, 92 Mont. 563.) County commissioners, acting as a Board, are by law constituted guardians of the property interests of the county. They occupy a position of trust and in that relation it is their duty to faithfully and efficiently serve their *cestui que* trust, the county. To unnecessarily forego money or other property to which the county is entitled would be nothing short of a betrayal of that trust. (*Andrews v. Pratt*, 44 Cal. 309; *Woods*

*v. Potter*, 8 Cal. App. 41; 15 C. J. 456.)

In view of the limitations of the statute (Section 4465), the decisions of the courts, and the circumstances here existing, it is our view that the Board is without power to waive the interest due on the warrants in question. In speaking thus we assume, of course, that at some time in the past the warrants were presented for payment to the proper officer and not then paid for want of funds.