

Opinion No. 336.

**County Commissioners—Irrigation
Projects—WPA Projects.**

HELD: County Commissioners have
no power to expend county money in
whole or in part for the purpose of

constructing, owning and operating small dams and reservoirs for conserving flood waters and furnishing stock water for farmers and stockmen within their counties.

August 5, 1936.

Mr. C. F. Holt
County Attorney
Great Falls, Montana

You have submitted the question whether the boards of county commissioners may legally expend money in whole or in part for the purpose of constructing, owning and operating small dams and reservoirs for conserving flood waters and furnishing stock water for farmers and stockmen within their counties.

The Chief Engineer of District No. 3 of the Works Progress Administration advises that the Federal Works Progress Administration is in a position to furnish federal aid in the form of relief labor and part of the equipment, if necessary. You advise that the expenditures of the counties would be largely for land acquisition (the regulations of the Works Progress Administration require that projects shall be constructed on public property only), for materials such as fencing and concrete aggregate, equipment in the form of trucks and teams, and engineering expense for survey and design. You are unable to give the facts in regard to each project but state that you are sure it would be for the benefit of the state.

We have called your attention to our opinion dated September 14, 1933, Volume 15, p. 227, Opinions of the Attorney General, where we express the opinion that county commissioners have no power to retain an irrigation engineer for the purpose of making a preliminary survey of a proposed irrigation district to be financed by the Federal Government under the National Industrial Recovery Act. The views expressed therein are controlling. We said:

"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."

The same may be said of the proposed expenditures. If the result, "benefit to the state", or county, be the test of power of the board of county commissioners, their power would be boundless and the taxpayers' money could be used for endless enterprises. The legislature has not seen fit to confer such sweeping power upon the board of county commissioners.

Whether or not the expenditure of such money in a given case is a legitimate expenditure for the relief of the poor for whom the board of county commissioners have a duty to provide, is a question on which we express no opinion because no facts are stated. We call attention to the following opinions of this office in Volume 15, Opinions of the Attorney General: No. 378, p. 261; No. 423, p. 292; No. 439, p. 304; No. 502, p. 343; No. 583, p. 404, compare No. 581, p. 403.

From the principles therein stated, the county commissioners no doubt can determine whether the expenditure for such purposes is within the limits of legitimate expenditures for the poor.