

**Opinion No. 104.**

**Counties—Sessions—County Commissioners—Meetings—Special,  
Number of.**

HELD: County commissioners are not limited in the number of special meetings they may hold.

May 17, 1937.

Hon. S. L. Kleve  
State Examiner  
Capitol Building  
Helena, Montana

Dear Sir:

On March 6, 1937 this office rendered you an opinion holding that the Board of County Commissioners (counties of first, second, third, and fourth class not included nor subject to) could hold only one special meeting in each month, in addition to the regular monthly meeting. (Opinion No. 80.)

This office now withdraws its opinion of said date, to that part as specified above, and substitutes the following opinion in lieu thereof.

Sections 4462 and 4463, R. C. M. 1935, constitute the only statutory authority for meetings of a Board of County Commissioners. The language used in Section 4462 demands liberal construction; for instance, we find the words "but the Board may at any time, hold an extra session." The words "may at any time" negatives any implication that only one special session should be held each month, and that the session must be held immediately after a regular session. The words "may at any time" must be construed liberally, and in their common sense meaning, with a view of meeting the exigencies confronting the Board in each particular county. The words "may at any time" must mean that the Board can meet from time to time, and at such times, as in their sound discretion is neces-

sary. The legislature in Section 4462 used a word of discretion when they used such a word as "may" and not a word of mandate.

It is obvious that a county having a population of twelve to fifteen thousand people would have more work to be performed than would a county of from two to five thousand, although both counties may be in the same classification. The amount, or number, of duties that may arise, and the time needed to perform those duties, cannot be mathematically forecast. In addition to the routine duties, made mandatory, to be performed by the Board of County Commissioners, there will be many emergency duties, such as arise from the destruction of bridges and roads by floods, destruction of county buildings by fire—all of which require immediate attention and none of which can be forecast by any Board. The performance of all of these duties is made mandatory upon the Board, and failure to perform such duties would mean legal liability either upon the individual members of the Board or the county. If the Board can meet only at specified and limited times, the Board in many cases would find it impossible to perform these duties, or, if these duties arose at a time when the Board was not in session, it certainly follows that if it is the duty of the Board to perform the duties, and if they were not permitted to meet, they would be acting in an absurd position, and the county's functioning would become impaired and perhaps impotent.

The electors of each county have placed a mandate upon these individual members of the Board to perform the executive functions of the county, and it must be assumed that this Board will perform its duty, and it certainly follows that the Board of County Commissioners is in a better position to judge the necessity of its meeting, and the amount of work and duties to be performed, than is this office.

Former Attorneys General have taken a contrary position upon this matter, and our Supreme Court has never adjudicated the same. However, in the case of Gallatin County vs. R. J. Pasha, in the Ninth Judicial District of the State of Montana, in a very carefully reasoned opinion, it was held that the Board of County Commissioners could meet for such number of special sessions, and at such times, upon the giv-

ing of two days' notice, as the work demanded. In this opinion, the court mentioned other authorities, and cited:

Morse vs. Granite County, 44 Mont. 78;

Jones vs. Carver, 38 Pac. 332.

It is, therefore, my opinion that the Board of County Commissioners, in any class county, can call special sessions upon the giving of two days' notice, and said notice of meeting may be given while the Board is either in or out of session, and in such numbers and at such times in each month as necessity decrees, and that the Board of County Commissioners, in any class county, is not limited to the number of special meetings it can hold.