

No. 113

**GOPHER EXTERMINATION—GOPHER POISON TO BE
FURNISHED AT ACTUAL COST**

Held: The Board of County Commissioners is without authority to furnish gopher poison purchased out of the fund denominated "gopher destruction fund" free of charge, but the same must be furnished at actual cost.

May 7, 1941.

Mr. J. Miller Smith
County Attorney
Lewis and Clark County
Helena, Montana

Dear Mr. Smith:

You have requested my opinion as to whether or not the Lewis and Clark County Commissioners may furnish poison, purchased out of the fund denominated the "gopher destruction fund," free of charge to persons

in the Lincoln district to be used by them on horticultural, farming and grazing lands located in the Lincoln vicinity in exterminating Columbia ground squirrels, gophers and prairie dogs.

Section 4498, Revised Codes of Montana, 1935, provides:

"The Board of County Commissioners of any county in this State may create a gopher extermination fund, either by appropriating money from the general fund of the county, or at any time fixed by law for levy and assessment of taxes, levy a tax not exceeding one mill on the dollar of assessed valuation upon all horticultural, farming, and grazing lands in such county, the proceeds of which shall be used solely for the purpose of promoting the destruction of gophers in said county; the fund provided to be raised in accordance with this Section shall be denominated the 'gopher destruction fund,' and shall be kept separate and distinct by the County Treasurer, and shall be expended by the Board of County Commissioners at such time, and in such manner, as is by said Board deemed best to secure the abatement and extermination of the gopher pest."

Section 4499, Revised Codes of Montana, 1935, provides:

"The Board of County Commissioners of any county may, from time to time, purchase such quantities and amounts of poison as the Board may deem proper, and may furnish such poison to any person or persons appointed in accordance with the provisions of Section 4495 to exterminate gophers, and may also furnish such poison to other persons desiring to use the same for the extermination of gophers, at actual cost thereof; provided, however, that the cost of such poison shall be paid out of the 'gopher destruction fund,' and all moneys received from the sale thereof shall be paid into such fund."

Thus it can be seen that Section 4498 created the "gopher destruction fund" and Section 4499 sets out how the fund shall be used by the Commissioners for the purchase of the poison, to whom the same shall be distributed, that the costs of such poison shall be paid out of the "gopher destruction fund" and all moneys received from the sale thereof shall be paid into such fund.

The two above named sections which are Sections 4 and 5 of Chapter 153, Laws of 1919, should, I believe, be read and construed together; and whether the poison is furnished from said fund under Section 4499 to a person appointed as a gopher exterminator under Section 4495 or to other persons, it can be furnished only "at actual cost."

Under the provisions of Section 4496, it is provided, among other things, that any person who is not financially able to poison, kill and exterminate the gophers on his land or premises, may make application to the County Commissioners for financial assistance in procuring poison for him for that purpose. The amount so advanced by the County Commissioners shall be paid by such county out of its general fund, and charged as taxes against each parcel of land owned by such person, or against the personal property owned by him.

The County Commissioners may operate out of the general fund under the provisions of Sections 4496 and 4497; but under these sections, whether a duly appointed gopher exterminator actually performs the work or such work is performed by occupants of the land, after notice given as provided by Section 4496, the cost of the labor performed by such appointed gopher exterminator and of the poison and grain used must be "charged as taxes against each parcel of land on which the expenses are incurred," and "the County Treasurer of such county shall collect said amounts the same as taxes." This would return the money to the general fund under that method.

You have informed me that Lewis and Clark County has elected to operate under the "gopher destruction fund," which fund you advise is still in operation and existence.

Under the provisions of Section 4499, the fund may be used to provide poison for the gopher exterminator under the provisions of Section 4495 or any other person desiring to use the same—but in every event the poison must be furnished “at actual cost” and the receipts paid back into such fund.

Therefore, it is my opinion the Board of County Commissioners is without authority to furnish gopher poison purchased out of the fund denominated “gopher destruction fund” free of charge, but the same must be furnished “at actual cost.”

We therefore concur in your opinion on this subject rendered to the Board of County Commissioners under date of April 17, 1941.

Sincerely yours,

JOHN W. BONNER
Attorney General