

No. 221

COUNTY COMMISSIONER—COW TESTER—
COUNTY AGENT—MILK

Held: Board of county commissioners may not lawfully appropriate county money to assist a dairy herd improvement association in hiring a cow tester for the purpose of keeping reports of the cows so as to select for breeding only cows of marked productivity in milk.

August 25, 1941.

Mr. E. Gardner Brownlee
County Attorney
Ravalli County
Hamilton, Montana

Dear Mr. Brownlee:

You have submitted the following:

"May the board of county commissioners appropriate \$600.00 or any amount toward the expense of hiring a cow tester for the purpose of testing the dairy herds of the county so as to improve and increase the milk productivity of the herds, in cooperation with a dairy herd improvement association."

In answering your question we must keep in mind the board of county commissioners is the manager of the county's business.

"A county is merely a subdivision of the state for governmental purposes and as such is subject to legislative regulation and control; the legislature may within constitutional limitations, circumscribe or extend the powers to be exercised by a county.

"The fact that the contemplated action may be in the best interests of the county is not an admissible argument. The doctrine of expediency does not enter into construction of statutes."

Franzke v. Fergus County, 76 Mont. 150, 156, 245 Pac. 962.

There is no question the program undertaken by the Dairy Herd Improvement Association is very meritorious and for the best interests of the owners of the dairy herds; but our statutes do not cover or provide for the using of the taxpayers' money for such purpose, and before the commissioners may lawfully appropriate the county money for such an undertaking, they must be able to point to the law giving them the authority.

"The power to act without authority does not exist."

State ex rel. Bean v. Lyons et al., 37 Mont. 354, 364, 96 Pac. 922.

The board of county commissioners no doubt would be glad to cooperate in this worthy project if it could lawfully do so; but from a search of the laws it appears the only way in which the board of county commissioners may lawfully cooperate in this program would be under Section 4487, Revised Codes of Montana, 1935, which authorizes the commissioners, when in their discretion they think it is best for the interests of the county, to make a levy for the purpose of carrying on extension work in agriculture and home economics in cooperation with the State

College of Agriculture and Mechanic Arts, the United States Department of Agriculture, and enter into a contract as therein provided for the county agent and the extension work.

Therefore, it is my opinion the board of county commissioners may not lawfully appropriate the sum of \$600.00—or any other amount—to help pay the costs of cow testing in cooperation with a dairy herd improvement association for the purpose of improving such herds and the milk productivity thereof.

Sincerely yours,

JOHN W. BONNER
Attorney General