

## No. 31

COUNTY COMMISSIONERS—COUNTIES—POWERS OF  
COUNTY COMMISSIONERS

Held: County Commissioners are not authorized to expend funds for drainage project unless such power is expressly conferred or necessarily implied from other powers granted.

February 21, 1941.

Mr. W. W. Lessley  
County Attorney  
Gallatin County Courthouse  
Bozeman, Montana

Dear Mr. Lessley:

This will acknowledge receipt of your letter of recent date requesting my opinion as follows:

"The citizens of Willow Creek, Montana, an unincorporated settlement in Gallatin County, are bothered with ground water in the basements of their residences. This is ground water which has bothered them for years, but is considerably worse since the Willow Creek dam has been constructed. The citizens of Willow Creek wish to devise some means of draining this surplus water from the basements above mentioned.

"Has Gallatin County any legal right to spend money for engineering or construction purposes in connection with such a proposed drainage project? If so, what county fund would bear the expense and to what budget account would the expense be chargeable?"

Our Supreme Court has repeatedly held that the Board of County Commissioners may exercise only such powers as are expressly conferred upon it or are necessarily implied from those expressed, and that, where there is a reasonable doubt as to the existence of a particular power in the Board of County Commissioners, it must be resolved against the Board and the power denied. Among the more recent pronouncements by our Court in this respect are: *Lewis v. Petroleum County*, 92 Mont. 563, 17 Pac. (2nd) 60; *State ex rel. Bowler v. Board of County Com'rs of Daniels County*, 106 Mont. 251, 76 Pac. (2nd) 648.

In a determination of such power it is immaterial that the contract would be for the county's best interest.

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

We are unable to find any statutory authority which would indirectly, or by necessary implication, warrant expenditures for the purposes you have described. However meritorious such a project may be, we are, nevertheless, under the foregoing authorities, constrained to hold that your county cannot legally make such expenditures.

It therefore becomes unnecessary to render any opinion as to the source of funds used for such project.

Sincerely yours,

JOHN W. BONNER  
Attorney General