

No. 380

COUNTIES—FINANCES

Held: Where life insurance policy is assigned to county, assignment arising out of a series of illegal transactions, county is not authorized to pay premiums on policy, even though such action may inure to benefit of county.

March 21, 1942.

Mr. J. E. McKenna
County Attorney
Fergus County
Lewistown, Montana

Dear Mr. McKenna:

As an outgrowth of failures in 1923 of banks in which your county had deposits, the then the board of county commissioners did not elect to sue upon bonds given to secure deposits but made various settlements with the sureties. Among these settlements, you inform me, was one whereby the county accepted promissory notes given by a surety together with collateral consisting of, among other things, a life insurance policy payable to the county. Later, the individual surety being insolvent, the county accepted a full assignment of the policy in satisfaction of the indebtedness. The question now is whether the board of county commissioners is authorized to pay premiums on the policy in order to realize the ultimate proceeds therefrom.

Acceptance of the notes by the county in the first place constituted an illegal contract. (Fergus County v. Osweiler, 107 Mont. 466, 86 Pac. (2nd) 410.) Likewise the extinguishment of the obligation by the assignment of the insurance policy to the county was wholly unauthorized. Carrying the proposition one step more, premium payments on the policy constitute

a furtherance of the series of illegal transactions. We can find no statutory authority, either express or implied, given the board of county commissioners which would warrant such premium payments. While payment of premiums in this particular instance might inure to the substantial benefit of the county, the doctrine of expediency bears no weight where the statutory authority is non-existent. (Franzke v. Fergus County, 76 Mont. 150, 245 Pac. 962.)

I must agree with you, therefore, in your opinion the county is not authorized to pay premiums on a life insurance policy assigned to the county under the circumstances which you relate.

Sincerely yours,

JOHN W. BONNER
Attorney General