

No. 415

**COUNTY COMMISSIONERS—TRANSPORTATION—
SCHOOLS—SUPERINTENDENT OF SCHOOLS**

Held: A board of county commissioners does not have authority to furnish an automobile for the use of county superintendent of schools.

May 16, 1942.

Mr. John D. Stafford
County Attorney
Cascade County
Great Falls, Montana
Attention: Mr. R. J. Nelson, Deputy.

Dear Mr. Stafford:

You have asked me for my opinion whether the Board of County Commissioners may purchase an automobile for the use of the county superintendent of schools—the county commissioners deeming such arrangement would be cheaper for the county than paying transportation.

In answering your inquiry, it is well to keep in mind a board of county commissioners has only such power and authority as is expressly conferred upon it by the legislature.

Simpson v. Silver Bow County, 87 Mont. 83, 285 Pac. 195.

Counties are subdivisions of the state, of statutory creation; and when they assume to act, authority therefor must be found in the statutes conferring power upon them.

State ex rel. Blair v. Kuhr, 86 Mont. 377, 283 Pac. 758.

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

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

I am unable to find any provision in law which, either expressly or impliedly, gives the board of county commissioners any authority whatever to expend county funds for such a purpose. In fact, the law prohibits such a transaction by providing for travel of a county officer by railroad first, and then by use of his own automobile if suitable transportation cannot be had by railroad, prescribing five cents per mile therefor and prescribing liability of the approving board. (Section 4884.1, Revised Codes of Montana, 1935, as amended by Chapter 121, Laws of 1941).

It is therefore my opinion a board of county commissioners does not have the authority to expend county funds for an automobile for the use of the county superintendent of schools. Your advice to the Board was correct.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General