

No. 432

COUNTIES—COUNTY COMMISSIONERS, duties and powers of—IMPLIED POWERS—MONTANA PREPAREDNESS AND ADVISORY COMMISSION

Held: A board of county commissioners, in rendering aid and assistance to and in cooperating with the Montana Preparedness and Advisory Commission, under the provisions of Chapter 142, Laws of 1941, may—within its discretion and to the extent of available funds—appropriate county funds for use by the County Preparedness and Advisory Commission set up under the act, if necessary in rendering aid and assistance to the State Commission, provided any such appropriation will not jeopardize the regular necessary business of the county.

June 24, 1942.

Mr. Bert W. Kronmiller
County Attorney
Hardin, Montana

Dear Mr. Kronmiller:

You have advised me the County Defense Commission of Big Horn County has asked the Big Horn County Commissioners to appropriate the sum of \$500.00 for expenses necessary incurred by the County Defense Commission, and you ask my opinion whether the county commissioners have authority to make such appropriation.

It is well settled law in this state, many times expressed by our Supreme Court, that boards of county commissioners have only such powers as are granted them by the legislature, or as are necessarily

implied from those expressly granted. (See *State ex rel. Lambert v. Coad*, 23 Mont. 131, 137, 57 Pac. 1092; *Independent Publishing Co. v. County of Lewis and Clark*, 30 Mont. 83, 86, 75 Pac. 860; *Yellowstone Co. v. First Trust & Savings Bank*, 46 Mont. 439, 450, 128 Pac. 596; *Hersey v. Neilson*, 47 Mont. 132, 143, 131 Pac. 30; *Edwards v. County of Lewis and Clark*, 53 Mont. 359, 365, 165 Pac. 297; *Franzke v. Fergus County et al.*, 76 Mont. 150, 245 Pac. 962; *State ex rel Blair v. Kuhr*, 86 Mont. 377, 282 Pac. 771; *Simpson v. Silver Bow County*, 87 Mont. 83, 285 Pac. 195.)

Section 4441, of the Revised Codes of Montana, 1935, provides:

"Every county is a body politic and corporate, and as such has the power specified in this code, or in special statutes, and such powers are necessarily implied from those expressed."

A board of county commissioners is an executive body of limited powers and must in every instance justify its actions by reference to the provisions of law defining and limiting its powers. (*Morse v. Granite County*, 44 Mont. 78, 119 Pac. 286.) And when a board of county commissioners assumes to act, authority therefor must be found in the statutes. (*Judith Basin County v. Livingston*, 89 Mont. 438, 298 Pac. 356.)

In the light of the above decisions and of the provisions of Section 4441, *supra*, we must look to some statute giving authority to the board of county commissioners to expend money for the purpose here considered, or for some power or authority necessarily implied from that expressly given.

Chapter 142, Laws of 1941, provide for the creation and appointment of the Montana Preparedness and Advisory Commission and defines its powers and duties. It also appropriates money for carrying out the purposes of the act. Section 1 creates the commission and provides for the appointment of its membership by the Governor. It further provides the members shall serve without pay, but may be allowed necessary traveling expenses incurred in the performance of their duty. Section 2 gives the commission the power to adopt by-laws for its government and to provide for the discharge of the duties of the commission by subordinate officers, agents, sub-committees and to employ such employees as may be necessary and prescribe their duties. Section 3 gives to the chairman of the commission authority to appoint three resident citizens in each of the various counties of the state to perform such duties as the commission may order or require, and provides the members of the county commission shall not be paid any salary or per diem, but may be paid actual expenses when traveling on official business.

Section 4 of the act sets forth the purposes and objects of the commission. Inasmuch as those purposes and objects are material to a solution of the question here considered, we quote the section in full:

"The objects and purposes of the commission created by this act are to work with the national defense advisory commission to collect and correlate information relative to the resources of Montana that might be valuable or used in any national preparedness program and to furnish the national defense advisory commission with all information that it may desire or require along these lines, and to represent the State of Montana in requesting the government of the United States and its various departments and branches, including the national defense advisory commission, to use the natural resources of the State of Montana and the facilities which Montana has to offer in the way of sites for cantonments, airplane bases, lands for industrial plants for the preparation of war materials and all other purposes in the way of tendering assistance to the government of the United States, and asking the government of the United States to assist for preparedness purposes in the development of the resources and facilities of the State of Montana, and for these purposes the commission shall have the power to subpoena witnesses, direct the state educational institutions

and various boards and bureaus of this State to furnish information and do such things and take such action as may be necessary within the purposes contemplated by this act, and for this purpose may issue subpoenas, call, swear and examine witnesses." Section 4, Chapter 142, Laws of 1941.

Section 7 of the Act appropriates the sum of twenty-five hundred dollars "for the purpose of carrying out the provisions of this act."

Section 8 provides:

"Be it further enacted that all officers, departments, boards, commissions, institutions and agencies of the State government or any county or municipality in the State shall cooperate with the commission and shall render it such aid and assistance and give it such information as the commission may need or require."

It is clear the purposes and objects set forth in Section 4 of the act are for the benefit and protection of each and every county of the State. The legislature by Section 8 has enjoined upon the county the duty, power and authority to cooperate with the state commission and to "render it such aid and assistance and give it such information as the commission may need or require." The act does not indicate the mode by which the duty imposed upon the board of county commissioners shall be exercised.

It is fundamental that, when powers are granted to a board and no mode of exercise is indicated, the board may in its discretion select any appropriate mode or course of procedure. (*Simpson v. Silver Bow County*, supra; *State ex rel Blair v. Kuhr*, supra; *Fisher v. Stillwater County*, 81 Mont. 31, 261 Pac. 607; *Stange v. Esva*, 67 Mont. 301, 215 Pac. 807.) The mandate of the legislature to county boards is broad. It requires the board to render aid and assistance to the state commission. It does not state what form or kind of aid or assistance, except it specifies such as the commission may need or require. It must be assumed, however, such aid or assistance will inure to the benefit of the county, either directly or indirectly. Hence, if such aid or assistance as the commission may require entails the expenditure of money, under the principles of law mentioned above it would seem the board would have authority for such expenditure.

A question somewhat analagous was before our Supreme Court in the case of *State ex rel Blair v. Kuhr*, supra. The board of county commissioners is constituted the county board of equalization and was required by statute to adjust and equalize assessments as made by the assessor. The statute did not set out the method or procedure by which the board was to perform the duty. In the case cited, the board had employed a firm of experts to reclassify, reappraise and revalue all the property in the city of Havre at an agreed sum. The question for determination was the authority of the board to use public funds for this purpose. The Court there said:

"To constitute the board of county commissioners ex-officio a county board of equalization, require it as such to adjust and equalize assessments as made by the assessor, and then deny it implied power to contract with specialists so as to enable it to obtain necessary data of character to enable it to act intelligently, would be equivalent to a complete nullification of the power expressly conferred."

State ex rel Blair v. Kuhr, 86 Mont. 377, 283 Pac. 771.

And our Supreme Court, in the case of *Arnold v. Custer County*, a case similar in facts to that of *Blair v. Kuhr*, and approved in that case, quoted with approval from 15 C. J. 457 as follows:

"It is well settled that a county board possesses and can exercise such powers . . . as are requisite to the performance of the duties which are imposed upon it by law. It must necessarily possess an

authority commensurate with its public trusts and duties. Therefore, it possesses inherent authority to perform acts to preserve or benefit the corporate property of the county intrusted to it.”

Arnold v. Custer County, 83 Mont. 130, 269 Pac. 396.

The language of the Supreme Court in the Blair v. Kuhr case quoted above might well be used here. To enjoin upon the board of county commissioners the duty to cooperate with the state commission and to render it such aid and assistance as it may need and require, and then to deny the board the right to expend county funds if necessary to render such aid or assistance, would be to nullify the power or duty expressly conferred. I am of the opinion that, under the provisions of this act, the board of county commissioners has implied power to expend county funds, if necessary, to render aid and assistance as required or needed by the state commission.

However, it must not be understood the board must necessarily expend such sums and in such amount as the state commission may demand or require. The county board must exercise a discretion in the matter. It may not violate any other law, such as the County Budget Act, nor may it jeopardize the regular necessary business of the county. It may only make expenditures within its ability.

It is therefore my opinion a board of county commissioners, in rendering aid and assistance to and in cooperating with the Montana Preparedness and Advisory Commission, under the provisions of Chapter 142, Laws of 1941, may, within its discretion and to the extent of available funds, appropriate county funds for use by the county Preparedness and Advisory Commission set up under the act, if necessary in rendering aid and assistance to the State Commission, provided any such appropriation will not jeopardize the regular necessary business of the county.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General