

No. 52

**PREDATORY ANIMAL HUNTERS, Salaries of—BOARD
OF COUNTY COMMISSIONERS—LIVESTOCK
COMMISSION**

Held: The Board of County Commissioners is without authority of law to make expenditures of money from the general fund of the county with which to pay or partly pay the salaries of predatory animal hunters and trappers, either as a county project or in a joint project with others.

March 19, 1941.

Mr. Neil D. Heily
County Attorney
Stillwater County
Columbus, Montana

Dear Mr. Heily:

You have submitted the following question:

"The Fish and Wildlife Service of the U. S. Dept. of Interior have offered to pay one-fourth of the salary of a hunter employed to destroy predatory animals in Stillwater county. The woolgrowers of the county have offered to pay one-half of such salary and they now request the County Commissioners to authorize the expenditure out of the general fund of the county of sufficient to cover the balance of such salary which would be approximately \$450.00 per year. In your opinion do the Commissioners have the statutory power to authorize such a payment out of the general fund?"

Section 2082, Revised Codes of Montana, 1935, provides:

"2082. **Tax Levy for Bounties on Predatory Animals.** Whenever the owners, or agent or agents of such owners, representing fifty-one per cent of the livestock of any county in this state shall present a petition to the Board of County Commissioners of such county, asking for the levy of a tax upon the livestock of such county for the purpose of paying bounties on predatory animals killed in such county,

it shall be the duty of such Board of County Commissioners to make such levy, which shall not exceed ten mills on the dollar on the assessed valuation of all livestock in such county, which tax shall be assessed and collected in the same manner as all other state and county taxes."

Section 2083, Revised Codes of Montana, 1935, provides:

"2083. Signers of Petition—Time for Presenting—Limitation on Bounties—Bounty Inspectors. The petition provided for in Section 2082 shall be signed by the owners, agent, or agents of not less than fifty-one per cent of the livestock of such county as ascertained from the assessment books of such county, and shall recommend to the Board of County Commissioners the bounties to be paid on such predatory animals, which shall not exceed the following: On each wolf or mountain lion, one hundred dollars; on each wolf pup or mountain lion kitten, twenty dollars; on one coyote, five dollars; on each coyote pup, two dollars fifty cents.

"Such petition shall be presented not later than the first day of August of each year, and the Board of County Commissioners on determining the sufficiency of such petition shall make an order granting such petition, which said order shall fix the levy for that year, and the amount of the bounties to be paid for the killing of each such predatory animal, which shall not exceed the amounts recommended in such petition, and appoint not less than ten, nor more than twenty, stockowners of such county to be bounty inspectors under this act, without compensation, who shall hold their offices for one year."

You will note neither of the above-mentioned sections authorizes the Board of County Commissioners to make expenditures out of the general fund for the purpose of hiring hunters to destroy predatory animals. The sections referred to merely have to do with the tax levy for bounties on predatory animals, providing for the payment thereof, etc.

Section 3417.2, Revised Codes of Montana, 1935, provides:

"3417.2. Livestock Commission to Supervise Destruction of Wild Animals—Cooperation with Federal and Other Agencies. The destruction of wild animals shall be conducted under the supervision of the Livestock Commission, which shall make rules and regulations respecting the same and arrange for the carrying out of the provisions of this Act, and said Commission is hereby authorized to co-operate with the authorized representatives of the United States Biological Survey for the systematic destruction of said wild animals by hunting, trapping and poisoning operations. Furthermore to increase the destruction of wild animals, the Livestock Commission may also enter into co-operative agreement with state departments, counties, associations, corporations and individuals."

While the above-quoted section gives to the Livestock Commission authority to enter into cooperative agreements with state departments, counties, associations, corporations and individuals for the systematic destruction of wild animals by hunting, trapping and poisoning operations, I fail to find any provision under the laws of our State which gives to the Board of County Commissioners authority to enter into such agreements.

Section 3417.11, Revised Codes of Montana, 1935, provides:

"3417.11. Use of Funds Remaining After Payment of Bounties—Sale of Furs, Skins and Specimens—Presentation to Museums. If, at the end of any bounty paying season, there shall be a surplus in the state bounty fund, such surplus may be used to hire salaried hunters and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

"All furs, skins and specimens, taken by hunters or trappers, whose salaries may be paid in whole or in part out of the fund herein created, shall be sold by the Livestock Commission, and the proceeds from such sales shall be credited to the bounty fund, the same to be used in the further carrying out of the provisions of this Act, provided that any specimens so taken may be presented, free of charge to any state museum or institution."

By the above section authority is given to the Livestock Commission to expend surplus funds of the "state bounty fund" at the close of a bounty paying season for the payment of salaries of predatory animal hunters and for the purchase of poison to be used for a poison campaign on predatory animals.

Thus sections 2081 through 2087 cover the raising of moneys for the purpose of paying bounties on predatory animals; Section 3417.2 gives authority to the Livestock Commission to cooperate with others for the systematic destruction of predatory animals; and Section 3417.11 gives authority to the Livestock Commission to expend surplus moneys of the state bounty fund at the end of a bounty paying season to hire salaried hunters and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

If the Fish and Wildlife Service of the United States Department of Interior will pay one-fourth of the hunter's salary and the woolgrowers will pay one-half, then in all probability the Livestock Commission under the provisions of Sections 3417.2 and 3417.11 could, if there is a surplus in the state bounty fund at the end of a bounty paying season, pay the remaining one-fourth balance.

Therefore, it is my opinion the Board of County Commissioners is without authority of law to make expenditures of money from the general fund of the county with which to pay or partly pay the salaries of predatory animals hunters and trappers, either as a county project or in a joint project with others.

Sincerely yours,

JOHN W. BONNER
Attorney General