

January 23, 1943.

Mr. T. W. Warwick, Chairman
Board of County Commissioners
Pondera County
Conrad, Montana

Dear Mr. Warwick:

As clerk of the board of county commissioners of Pondera County, Mr. Wickware has requested my opinion on the following matters:

1. The assessor of Pondera County, a seventh class county, presented to the board of county commissioners, at its regular meeting in January, a certificate of appointment of a deputy in his office. The commissioners did not approve the same, holding that—under section 4880, Revised Codes of Montana, 1935—he was not entitled to a deputy until March, and then only for five months, at a salary of \$100.00 per month. You inquire whether this holding is correct.
2. You ask whether the board of county commissioners may refuse to pay the deputy's salary, in view of the fact it did not approve the appointment.
3. Your third question is whether the board of county commissioners may order expense claims of county officers paid, when the same have been presented without properly signed vouchers for such expense attached. You call my attention to Section 2038, Revised Codes of Montana, 1935, and inquire whether that section should be the commissioners' guide in such matters.

Your questions will be considered in the order presented.

1. In answer to your first question, it is my opinion the holding of the board of county commissioners is correct—that is, an assessor in a county of the seventh class is entitled to a deputy only during the months of March, April, May, June and July, at a salary of not exceeding one hundred dollars per month. Such provision is made specific in Section 4880, Revised Codes of Montana, 1935, as amended by Chapter 97, Laws of 1939, wherein it is said in regard to county assessors:

“In counties of all other classes (other than first, second and third) assessors may be allowed one deputy during the months of March, April,

Opinion No. 10.

County Commissioners, Power of to promulgate rules and regulations regarding claims—County Assessor—Deputy, appointment of, salary of—County Officers, Expense claims of.

Held: An assessor of a county of the seventh class is entitled to deputy only during the months of March, April, May, June and July, at a salary not exceeding one hundred dollars per month. The board of county commissioners is not authorized to make payment of the salary of the deputy in question. The board of county commissioners has the right to order a claim of a county officer paid, although properly signed vouchers for expenses have not been attached to claim, unless specific provisions of the law require vouchers to support the claim. The board of county commissioners may, however, promulgate rules governing approval of claims, and require vouchers supporting claims.

May, June and July, at a salary not exceeding one hundred dollars per month. . . ."

2. It is further my opinion the board of county commissioners of your county is not authorized to make payment of the salary of the deputy in question for the following reasons: first, because the specific statute above quoted permits employment of such deputy only during certain months; second, because the official 1940 census shows a population of 1,471 in Pondera county, and Chapter 168, Laws of 1941 provides the board of county commissioners in any county of the seventh class, having less than two thousand population, shall not approve any claim for compensation of any person appointed by an elected county officer of such county, where such appointment was not first authorized by the board of county commissioners.

3. In answer to your third question, it is my opinion the board of county commissioners has the right to order a claim of county officers paid, although properly signed vouchers for expenses have not been attached to the claim, unless specific provisions of the law require the vouchers to support the claim. Section 2038, Revised Codes of Montana, 1935, cannot be a general guide to the board of county commissioners as that section is specifically directed toward the county assessors and their deputies. Section 4465.11, Revised Codes of Montana, 1935, provides:

"The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: At the regular meetings of the board to examine, settle, and allow all accounts legally chargeable against the county except salaries of officers, and order warrants to be drawn on the county treasurer therefor, and provide for the issuing of the same."

This section prescribes the general powers and duties of the board of county commissioners, and in the absence of a specific provision requiring a county officer to present vouchers with the verified claim, allows the board of county commissioners to order the claim paid without the vouchers being present. The board is left free to exercise its discretion and judgment under this section. (State ex rel. Dolin v. Major, 58 Mont. 140, 192 Pac. 618.)

It is my opinion, however, the board of county commissioners, may, under Section 4465.22, Revised Codes of Montana, 1935, make rules governing the approval of claims, and requiring vouchers to support claims. For your information I am enclosing the report book for services rendered and expenses incurred required by the State Board of Examiners, together with the rules and regulations of the state board governing the approval of claims.

Sincerely yours,
R. V. BOTTOMLY
Attorney General