

**Opinion No. 100.****Counties—Hours of Labor—  
Emergency.**

Held: A board of county commissioners may legally pay a claim for necessary work performed in excess of eight hours where such work is occasioned by an unforeseen emergency, and the county received a benefit therefrom.

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July 31, 1943.

Mr. John D. Stafford  
County Attorney  
Cascade County  
Great Falls, Montana

Dear Mr. Stafford:

You have submitted for my consideration your opinion rendered to the county commissioners on July 14, 1943. The question at issue is:

“May employees of the county, in the course of work, based on an eight (8) hour day, work over the said eight hour period when confronted by an emergency calling for such additional time and would this additional work, above and beyond eight hours, be a valid and legal charge against the county?”

After a consideration of the facts and the law applicable thereto, I must agree with your conclusion, which answers the question presented in the affirmative.

As pointed out by you, this office in Opinion No. 70, Volume 20, Report and Official Opinions of the Attorney General, held the county commissioners may not contract for the performance of work or services for a longer period than eight hours, because such a contract would be in violation of the eight hour statutes and the Constitution of the state and hence, invalid and unenforceable. However, a different situation is presented in the facts here considered. While it is true the statute or constitutional provision makes no exception with regard to emergencies, I am of the opinion that—when a situation confronts the county commissioners where, in order to preserve county property or the health or safety of the inhabitants of the county, it becomes necessary for the employees to continue their work beyond the eight hour period—under the general principles of law and equity such workmen would be entitled to be compensated therefor.

An employee would indeed be derelict in his duty were he to permit the destruction of county property or the endangering of the health and safety of the inhabitants, by terminating his services at the completion of his eight hour day, when because of an emergency to continue would preserve the property or the health and safety of the inhabitants. In equity and good conscience the workman who was true to his duty and performed services in excess of eight hours in an emergency, thereby preserving county property, or protecting the health or safety of the inhabitants, should be rewarded for such services, although the county commissioners could not validly contract with a workman to perform services in excess of the constitutional limit of eight hours.

In addition to the case of First National Bank of Nashua, 112 Mont. 18, 113 Pac. (2nd) 783, cited by you in your opinion, we think it not amiss to refer to the early case of State ex rel. Northwestern National Bank of Great Falls v. Dickerman, County Treasurer, 16 Mont. 279, where our Supreme Court discusses the subject of illegal or void contracts from the standpoint of equity, and approves the

following general rule stated by Morawetz on Private Corporations:

“The general rule is that, if an agreement is legally void and unenforceable by reason of some statutory or common-law prohibition, either party to the agreement who has received anything from the other party, and has failed to perform the agreement on his part, must account to the latter for what has been so received. Under these circumstances the courts will grant relief irrespective of the invalid agreement, unless it involves some positive immorality, or there are other reasons of public policy why the courts should refuse to grant any relief in the case.”

In the event it is necessary for a workman to perform work for the county caused by an emergency and such work must be performed by working in excess of eight hours, there is an implied contract on the part of the county to compensate for such work where the county has received a benefit therefrom.

It is therefore my opinion a board of county commissioners may legally pay a claim for necessary work performed in excess of eight hours where such work was occasioned by an unforeseen emergency, and the county received a benefit therefrom.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General