

Opinion No. 246.

County Commissioners—Funds, Bridge
Fund, use of for purchase of truck—
Tax, Levied for maintenance of bridges,
etc.

Held: A board of county commission-
ers may use money of the bridge

fund for the purchase of a truck or other equipment to be used in maintaining the bridges of the county, if within the exercise of a sound discretion this is reasonably necessary for such purpose.

September 7, 1944.

Mr. Edison W. Kent
County Attorney
Granite County
Philipsburg, Montana

Dear Mr. Kent:

You have requested my opinion as to whether the county commissioners may purchase a truck and other necessary equipment for use in maintaining and repairing the bridges in the county, from the bridge fund.

A board of county commissioners is one of limited jurisdiction and powers, and must in every instance justify its action by reference to the provisions of law defining and limiting these powers. (State ex rel. Lambert v. Coad, 23 Mont. 131, 137, 57 Pac. 1092; State ex rel. Gillett v. Cronin, 41 Mont. 293, 295, 109 Pac. 144.)

When determining whether or not a board of county commissioners have authority to do a certain act, we must find some statutory provision specifically giving such authority or from the language of which the authority may reasonably be implied.

With reference to the question here considered, we find Section 4465.3, Revised Codes of Montana, 1935, defining the jurisdiction and powers of the board of county commissioners. As to highways, ferries and bridges, it provides in part:

"The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law.

"To lay out, maintain, control and manage public highways, ferries and bridges, within the county, and levy such tax therefor as required by law . . ."

The duty to exercise the authority granted by this statute is mandatory. (Moore v. Industrial Accident Fund, 80 Mont. 136, 139, 259 Pac. 825.) While the legislature has thus imposed the duty upon the board to maintain the highways, ferries and bridges, it has

not set out any specific mode or method for the board to follow. In such a case then, our Supreme Court has held in the case of *Morse v. Granite County*, 44 Mont. 78, 98, 119 Pac. 286:

"The board is left free to use its own discretion in selecting the mode it shall adopt or the course it shall pursue, and the result cannot be called in question if the course pursued is reasonably well adapted to the accomplishment of the end proposed."

Section 1704, Revised Codes of Montana, 1935, provides for the levy of a tax for the purpose of "constructing, maintaining and repairing free public bridges." The fund provided by this special tax is a special fund for use only in constructing, maintaining and repairing free public bridges. Therefore, any money expended from this fund for these purposes only is lawful.

If, therefore, the board of county commissioners exercising a sound discretion, deem it necessary that a truck or other equipment be purchased for the purposes above mentioned, it has authority to purchase the same from the bridge fund.

It is therefore my opinion that a board of county commissioners may use money of the bridge fund for the purchase of a truck or other equipment to be used in maintaining the bridges of the county, if within the exercise of a sound discretion this is reasonably necessary for such purpose.

Sincerely yours,
R. V. BOTTOMLY
Attorney General