

Opinion No. 266.

**Property—Counties—County Commissioners—Leases—Contracts—
Poor, Contracts for Care of.**

Held: The county commissioners may not let a contract for the care, support and maintenance of the poor and indigent sick and infirm at any time other than June of any year; the commissioners may abandon the method being used in caring for the poor and adopt the other method provided by statute; when the county poor farm has been abandoned for use in caring for the poor, the county commissioners may lease the property under the provisions of Section 4465.27, Revised Codes of Montana, 1935, as amended by Chapter 152, Laws of 1937.

December 22, 1944.

Mr. Lyman H. Bennett, Jr.
County Attorney
Madison County
Virginia City, Montana

Dear Mr. Bennett:

I have your letter requesting an opinion on the following question:

“The county has a county farm which has been utilized for care of indigent sick and infirm and care and maintenance of county poor. A superintendent has been employed. In the light of the fact, however, that inmates of this institution cannot be recipients of old age assistance, the commissioners are considering leasing the farm and letting a contract for the care of the poor.

The question is whether or not this may be done at all, and particularly whether it may be done before June of next year."

In determining whether or not a board of county commissioners may do a certain act, we must start out with the rule, so often enunciated by our Supreme Court, that a board of county commissioners may exercise only those powers conferred upon them by organic or statutory laws, or such as may arise by necessary implication from an express power. (*State v. Cronin*, 41 Mont. 293, 109 Pac. 144; *Ainsworth v. McKay*, 55 Mont. 270, 175 Pac. 887; *Judith Basin County v. Livingston*, 89 Mont. 438, 298 Pac. 356.)

And the further rule that where there is a reasonable doubt as to the existence of a particular power in the board, the power must be denied. (*Sullivan v. Big Horn County*, 66 Mont. 45, 212 Pac. 1105; *Lewis v. Petroleum County*, 92 Mont. 563, 17 Pac. (2nd) 60.)

The legislature has granted authority to the board of county commissioners to provide for the care, support and maintenance of the poor and indigent sick and infirm of the county, and in Sections 4525, 4526 and 4527, Revised Codes of Montana, 1935, as amended by Chapter 131, Laws of 1943, has set out the procedure to be followed in exercising such authority. Therefore, under the rules above mentioned, the board may not exercise its authority in any manner other than that set out by these statutes.

The language of these statutes is clear and unequivocal. Section 4525 specifically provides that "at its regular meeting in **May** of each year, the board may make an order directing the clerk to publish a notice inviting sealed proposals." Section 4526 specifically provides that "the board may annually at its **June** meeting award a contract . . ." The legislature must be assumed to have had some object in mind when it specifically provided when these contracts should be awarded. It is not for the Courts, nor the Attorney General, to change the language as written by the legislature. Where the legislature has prescribed with particularity the essential steps necessary to be taken by a county in the exercise of a power granted, the statute must be held to exclude any other mode of procedure,

under the doctrine *expressio unius est exclusio alterius*. (*Franzke v. Fergus County, et al.*, 76 Mont. 150, 153, 245 Pac. 962.)

It may be true that it would be impractical or inexpedient to defer the leasing of the county property and entering into a contract for the care of the poor until June, or that it would be for the best interests of the county to do so at an earlier date, yet to do so would require the commissioners to adopt an unauthorized mode of procedure. Our Supreme Court, in the case of *Franzke v. Fergus County, et al.*, *supra*, said:

"The fact that the contemplated action may be in the best interest of the county is not an admissible argument. The doctrine of expediency does not enter into the construction of statutes."

There may be no question, under the statutes, that the county commissioners may provide care for the poor and indigent sick and infirm either by maintaining a poor farm, or by contract let in the manner provided by law. If the one or the other is being pursued, the commissioners, in their sound discretion, may abandon that method being used and adopt the other. The method is largely a matter within the sound discretion of the commissioners. (*Jones v. Cooney, et al.*, 81 Mont. 340, 346, 263 Pac. 429.)

Section 4465.27, Revised Codes of Montana, 1935, as amended by Chapter 152, Laws of 1937, authorizes the county commissioners "To lease and demise county property, however acquired, which is not necessary to the conduct of the county's business or the preservation of county property, and for which immediate sale cannot be had." Hence, under this statute, the board may lease the county poor farm when, in their judgment, it is no longer necessary for the purpose of caring for and maintaining the poor. When they have adopted the contract method in caring for the poor, then they have abandoned the other method, and there is no longer need of the county farm and the board may then lease the same under the provisions of the above statute.

It is therefore my opinion that the county commissioners may not let a contract for the care, support and maintenance of the poor and indigent

sick and infirm at any time other than June of any year; the commissioners may abandon the method being used in caring for the poor, and adopt the other method provided by statute; when the county poor farm has been abandoned for use in caring for the poor, the county commissioners may lease the property under the provisions of Section 4465.27, Revised Codes of Montana, 1935, as amended by Chapter 152, Laws of 1937.

Sincerely yours,
R. V. BOTTOMLY
Attorney General