

**Opinion No. 46.**

**Board of County Commissioners,  
Powers of—Rationing Boards**

Held: A board of county commissioners may not lawfully expend county funds for the purpose of hiring a clerk or stenographer for a local rationing board.

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April 21, 1943.

Mr. Earl C. Ammerman  
County Attorney  
Park County  
Livingston, Montana

Dear Mr. Ammerman:

I have your letter of April 6, 1943,  
as follows:

"The local rationing board has today formally requested of the board of county commissioners of this county that said board of county commissioners employ a clerk or stenographer to assist the county rationing board, in its work, the assistant to be paid from county funds. I shall appreciate an opinion from your office as to whether or not this would be permitted under the law."

In answering your inquiry it should be remembered the board of county commissioners is a board of limited power. It is limited in its authority by the legislature of the state. Unless the board of county commissioners can point to the law authorizing it to expend public funds for this purpose, then such expense may not be lawfully authorized.

Our Supreme Court has repeatedly held:

"The power to act without authority does not exist." (State ex rel. Bean v. Lyons et al., 37 Mont. 354, 364, 96 Pac. 922.)

The Court, stating the foregoing principle in a different way, stated:

"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." (Franzke v. Fergus County, 76 Mont. 150, 156, 245 Pac. 962.)

The rationing board is a federal agency operating under the office of price administration. The state and county have no control or responsibility in its operations. I have searched the statutes and find no authority for the board of county commissioners to expend county funds for such a purpose. It is therefore my opinion a board of county commissioners may not lawfully expend county funds for the purpose of hiring a clerk or stenographer for a local rationing board.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General