

Opinion No. 7

**Residence County Doctor—County
Commissioners—Health Officer,
County—Doctor, County.**

Held: That a board of county commissioners may not, under the present law, rent, purchase or build a home for the county doctor and health officer.

January 14, 1947.

Mr. Hilmer Johnson, Chairman
Board of County Commissioners
Liberty County
Chester, Montana

Dear Sir:

The question has been submitted to me as to whether or not the Board of County Commissioners may purchase for the county a house or home to be occupied by the county doctor, who will also be County Health Officer.

In answering the above question it is well to keep in mind that the Board of County Commissioners has only such power and duties as are conferred upon it by the legislature through statutory enactments.

In examining the statutes we find Section 4465.7, Revised Codes of Montana of 1935, provides:

"The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To purchase, receive by donation, or lease any real or personal property necessary for the use of the county, preserve, take care of, manage and control the same; but no purchase of real property, exceeding the value of one hundred dollars (\$100.00), must be made unless the value of the same has been previously estimated by three (3) disinterested citizens of the county appointed by the district judge for that purpose, and no more than the

appraised value must be paid therefor."

Section 4465.8, Revised Codes of Montana of 1935, provides:

"The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To cause to be erected and furnished a courthouse, jail, hospital, and such other public buildings as may be necessary."

The leasing, purchasing or erecting a home for the county doctor, who will be the health officer, would be outside of and beyond the powers conferred upon the board of county commissioners, as it could not be said that such a building would be for the use of the county nor would it be a public building as expressed in the laws.

I realize the situation many counties find themselves in in respect to homes for their county officers, and also the same situation confronts the school districts of the state, yet, if it were permissible for the board of county commissioners to buy, lease or erect a home for the county physician and health officer, it would be as reasonable to presume it had the authority to buy, lease or erect a home for the clerk and recorder, the county treasurer, the clerk of court, or any other county officer.

Our Supreme Court has repeated certain principles of law and some of them have become maxims. The following is an example:

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

Franske vs. Fergus County
76 Mont. 150, 158, 245 Pac. 962
Our Supreme Court has also stated:

"A county is a subdivision of the state, a body politic and corporate, with certain definite and fixed powers and duties. Members of the board of county commissioners, acting while in session, are the executive officers of the corporation, with power and duties definitely fixed by statute. These powers

are limited by statute, and any action taken must be justified by the provisions of law defining and limiting the powers conferred."

Until our legislature sees fit to confer upon the board of county commissioners the authority and power to do the things herein inquired about, the board of county commissioners of the various counties of this state may not so act.

Therefore, it is my opinion a board of county commissioners may not, under the present law, rent, purchase or build a home for the county doctor and health officer.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General.