

**Opinion No. 77**

**County Commissioners, May transact  
business when**

**Held: No county business coming  
within the purview of the**

**board of county commissioners may be lawfully transacted unless at least two members of the board of county commissioners are present at a regular, adjourned or special meeting of such board.**

November 12, 1947

Mr. Cecil N. Brown  
County Attorney  
Prairie County  
Terry, Montana

Dear Mr. Brown:

You have submitted the following question:

"May a board of county commissioners function, that is, attend to county business when only one of the board of commissioners is present?"

In answering your inquiry it will be noted that the "Board of County Commissioners" is provided for in the State Constitution—Section Four of Article XVI. They are constitutional officers.

Section 4452, Revised Codes of Montana, 1935, is as follows:

"Each county must have a board of county commissioners, consisting of three members, whose term of office is six years."

It should also be pointed out that, in all the statutes relating to the board of county commissioners, their powers and authority are delegated to them as a board, an entity.

Section 14, Revised Codes of Montana, 1935, provides as follows:

"Words giving a joint authority to three or more public officers, or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority."

Our Supreme Court has had this question before it, and the Court, speaking of the board of county commissioners, stated:

"This board, having supervision over the official conduct of all

county offices, and generally over all county business, is one of considerable dignity and power; and the statutes contemplated that its meetings shall be held and conducted in an orderly and business-like way. To bind the county by its contracts, it must act as an entity, and within the scope of its authority. Its members may not discharge its important governmental functions by casual sittings on dry-goods boxes, or by accidental meetings on the public streets; . . . The statutes do not vest the power of the county in three commissioners acting individually, but in them as a single board and the board can act only when legally convened. . . . And its minutes should be kept in such manner as to give true and correct information to all inquiring concerning county affairs." (Emphasis mine).

Williams, et al v. Board of County Commissioners of Broadwater County, 28 Mont. 360, 365; 72 Pac. 755.

Section 4461, Revised Codes of Montana, 1935, provides in part:

"The board of county commissioners must cause to be kept:

"1. A 'minute book' in which must be recorded all orders and decisions made by them, and the daily proceedings had at all regular and special meetings." (Emphasis mine).

From the foregoing statutes and decision of our Supreme Court, it is my opinion that no county business coming within the purview of the board of county commissioners may be lawfully transacted unless at least two members of the board of county commissioners are present at a regular, adjourned or special meeting of such board.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General