

**Opinion No. 120****County Commissioners, Authority of—Automobiles, Power to Purchase.**

**Held: A Board of County Commissioners has the power and authority to purchase an automobile to be used exclusively for general County purposes if in the opinion of such Board the automobile is necessary for the use of the County in the conduct of lawful County business. The use of said automobile for private purposes, or any other purpose, other than for lawful, necessary business of the County, by the members of the Board of County Commissioners or by anyone else would be a violation of the Laws of the State of Montana.**

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July 6th, 1950.

Mr. James D. Freebourn  
County Attorney  
Silver Bow County  
Butte, Montana

Dear Mr. Freebourn:

You have requested my opinion whether the Board of County Commissioners of Silver Bow County has the power to budget sufficient money in the general fund of the County to purchase a car for general County purposes.

The Commissioners have listed the following as general purposes for which the automobile will be used:

First: For the transportation of such indigent patients to and from the County hospital, and to rest homes.

Second: For transferring silicotic and tubercular patients to and from Galen.

Third: As a general patrol in the inspection of health conditions within the County, including garbage dumps, and other unsanitary conditions that may exist.

Fourth: Silver Bow County has fifty-two miles of sanitary sewer system that must be inspected and maintained at regular intervals by the health department. This car is used for transportation by the County Commissioners and health inspectors to and

from the scene of any blocked or broken sewer lines, blocked catch basins and jobs where new sewer lines are being installed.

Fifth: To select polling places for primary and general elections.

Sixth: Transportation for the Commissioners as a group acting as a County Board of Equalization in examining tax complaints submitted by property owners or agents.

Seventh: As a means of transportation to and from the State Capitol when called there on official business pertaining to the welfare of the County.

Eighth: As a means of transportation for the Board of County Commissioners to and from the scene of any complaint.

In your letter of May 5th, 1950, you informed the Board of County Commissioners that you were of the opinion that the Board did not have the authority or power to purchase an automobile to be used for the purposes enumerated by the Board. Your opinion relied upon the reasoning of Opinion No. 415, Volume 19, Report and Official Opinions of Attorney General, holding that an automobile could not be purchased by the County for the use of the County Superintendent of Schools.

In addition to Opinion No. 415, Vol. 19, *supra*, Attorney General Bottomly in Opinion No. 130, Volume 22, Report and Official Opinions of Attorney General, ruled that Boards of County Commissioners could not purchase County automobiles for their own official use, or the use of other County officers. Attorney General Bottomly also relied upon the reasoning of Opinion No. 415, Volume 19, *supra*.

Your opinion, Attorney General Bottomly's opinion and the opinion of Attorney General Gullickson in Opinion No. 415, Volume 19, *supra*, are all predicated upon and reason from the fact that the Legislature has not given Boards of County Commissioners express statutory authority to purchase an automobile.

In Opinion No. 64, Volume 23, Report and Official Opinions of Attorney General, it was held that Boards of County Commissioners have the authority to purchase an automobile for the official use of the County Surveyor. Such opinion was reasoned as follows: A statute requires that the County Surveyor shall be provided with necessary equipment to perform his duties as prescribed by law; the duties of a County Surveyor are such that an automobile is necessary to perform his duties; therefore Boards of County Commissioners have the authority to purchase an automobile for the use of the County Surveyor. Although the express power to purchase an automobile was not granted by statute, a Board of County Commissioners has such powers as arise by necessary implication from those expressly granted, or such as are requisite to the performance of the duties which are imposed on it by law. *Roosevelt County v. State Board of Equalization*, 118 Mont. 31,

162 Pac. (2d) 887; *Lewis v. Petroleum County*, 17 Pac. (2d) 60, 92 Mont. 563, 86 A.L.R. 575.

There are very few reported cases dealing with the precise question whether Boards of County Commissioners have authority to purchase automobiles for the use of the County or the use of the Commissioners acting as a Board of County Commissioners. *Ensley Motor Co. v. O'Rear*, 196 Ala. 431, 71 So. 704, held that a Court of County Commissioners could purchase an automobile for use in carrying out their function of inspecting roads, bridges, and ferries within their respective counties. The Alabama Supreme Court held that such a statute impliedly gave the Commissioners authority to purchase an automobile to use in inspecting the roads, bridges and ferries within the County since the Commissioners could exercise such powers as they deemed necessary to carry out the duties imposed upon them by law.

*Dorsett et al. v. State et al.*, 144 Okla. 33, 289 Pac. 298, held that while the purchase of automobiles for the individual use of County Commissioners in carrying on County road work was not authorized by law, automobiles could have been lawfully purchased if they were used exclusively for road work, i.e., the supervision of road work, and the transportation of workmen and tools needed on County road jobs.

Neither of the above cases are very helpful in determining the question of whether a Montana Board of County Commissioners has the authority to purchase an automobile to be used for general County purposes. Before answering the question at hand the statutory powers of Boards of County Commissioners must be examined.

Section 16-1007, Revised Codes of Montana, 1947, provides that 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.

Section 16-1024, Revised Codes of Montana, 1947, provides that the Board of County Commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To represent the County, and have the care of the County property, and the management of the business and concerns of the County in all cases where no other provision is made by law.

Section 16-1025, Revised Codes of Montana, 1947, provides that the Board of County Commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To make and enforce such rules for its government, the preservation or order and the transaction of business, as may be necessary.

Section 16-1027, Revised Codes of Montana, 1947, provides that the Board of County Commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To perform all other acts and things required by law not in this title enumerated, or

which may be necessary to the full discharge of the duties of the chief executive authority of the County government.

I am of the opinion that if the above cited statutes are to be given any effect the question posed herein must be answered affirmatively. The Board of County Commissioners is the chief executive authority of the County, that is, it has the responsibility for the proper management of County affairs. The Board is expressly given the power to purchase any personal property necessary for the use of the County. I submit if a Board of County Commissioners decides that an automobile to be used for general County purposes is necessary for the proper functioning of County affairs, it has the power and authority to purchase such an automobile. The Board has the discretion to act in such matters and its discretion should not be questioned in the absence of proof of an arbitrary or illegal use thereof. Said automobile must, however, be used exclusively for lawful and necessary County business. The use of said automobile for private purposes, or any other purpose, other than for lawful, necessary business of the County, by the members of the Board of County Commissioners or by anyone else would be a violation of the laws of the State of Montana.

The first three opinions heretofore discussed in this opinion have taken a narrow and strict view of the powers of Boards of County Commissioners. Under such a view of the powers of Boards of County Commissioners must necessarily be hampered and constricted. If a Board of County Commissioners must single out and point to a statute expressly granting the power to act whenever it desires to act the affairs of County government would necessarily suffer as a consequence.

I do not intend to herein pass upon the propriety of each of the uses for the automobile which the Board of County Commissioners has suggested. It is sufficient for the purposes of this opinion to say that a Board of County Commissioners has the power and authority to purchase an automobile to be used exclusively for general County purposes if in the opinion of such Board the automobile is necessary for the use of the County in the conduct of lawful County business.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.