

Opinion No. 64**County Commissioners, Authority of—Automobiles, May Be Purchased
For the Official Use of the County Surveyor—County Surveyor,
Automobile Required to Perform Official Duties of—**

Held: 1. Boards of County Commissioners have the authority to purchase an automobile for the official use of the County Surveyor since an automobile is necessary equipment for the performance of the Surveyor's duties.

October 15th, 1949.

Mr. Robert J. Nelson
County Attorney
Great Falls, Montana

Dear Mr. Nelson:

You have submitted for my opinion the following question:

"A question has arisen in this County as to the authority of the Board of County Commissioners to furnish the surveyor, Carl Lemmer, with an automobile to be used in his work, much of it under the supervision of the Board."

Two of my predecessors in the office of Attorney General have ruled upon the authority of the Board of County Commissioners to furnish automobiles for the use of County officials. Opinion No. 415, Volume 19, Report and Official Opinions of Attorney General, held that a Board of County Commissioners does not have authority to furnish an automobile for the use of the County Superintendent of Schools. The opinion stated that there was no provision in the law which expressly or impliedly, gave the Board of County Commissioners any authority whatever to expend County funds for such a purpose.

Opinion No. 130, Volume 22, Report and Official Opinions of Attorney General, relied entirely upon the holding in Opinion No. 415, Volume 19, *supra*, and held that Boards of County Commissioners may not purchase County automobiles for their own official use, or the use of other County officers.

Both of the above cited opinions based their decision upon the absence of statutory authority, either express or implied, giving a

Board of County Commissioners power to provide such equipment for County officials. Opinion No. 415, *supra*, further held that the law prohibited the furnishing of an automobile to the County Superintendent of Schools inasmuch as Section 4884.1, Revised Codes of Montana, 1935, as amended by Chapter 121, Laws of 1941, provided for travel of a County officer by railroad first, and then by use of his own automobile if suitable transportation cannot be had by railroad.

I have made an examination of the law with regard to the duties of County Surveyors and the equipment that may be supplied by the counties for the use of such surveyors. The Code Sections cited in the following two paragraphs pertain to such duties and the equipment necessary for the performance thereof.

Section 4838, Revised Codes of Montana, 1935, is as follows:

"The County Surveyor shall be provided with suitable office, together with necessary equipment, to perform his various duties as prescribed by law."

The mandate of the above quoted statute is that if the surveyor's duties require equipment it shall be furnished to him and therefore in the situation at hand if it can be demonstrated that the County Surveyor requires an automobile to perform his duties, it is the duty of the County to furnish such a vehicle.

Sections 4835 through 4847, Revised Codes of Montana, 1935, relate to County Surveyors and the duties of such surveyors are set forth therein. Such duties include, among other things, the making of any survey that may be required by order of the Court, or upon application of any person, and inspecting road works in the County. It would seem reasonable to conclude that the performance of the duties enumerated above necessitates the use of an automobile and since such automobile is required for the performance of the County Surveyor's duties, the County should be authorized to furnish such automobile.

The question of whether County Boards have the authority to purchase automobiles has been passed upon by two jurisdictions in the United States. In the case of *Ensley Motor Co. v. O'Rear*, 196 Ala. 431, 71 So. 704, the Alabama Supreme Court passed upon the question of whether a Court of County Commissioners could purchase an automobile for use in carrying out their function of inspecting roads, bridges, and ferries. The statute in question vested Courts of County Commissioners with general superintendence over the roads, bridges, and ferries within their respective counties. The 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.

Porter v. Fletcher, 138 N.Y.S. 557, 153 App. Div. 470, affirmed in 211 N. Y. 524, 105 N.E. 1096, raised the question of whether the Board of

County Supervisors could purchase an automobile for the use of the County Superintendent of Highways. In holding that the Board was justified in authorizing the purchase of the automobile, the Court held as follows at page 471 of the Appellate Division Reporter:

"The institution of this system of County highways authorized by the act in question very largely increased the work and responsibility of the County Superintendent of Highways, and it might well be held that for better efficiency in service of the said County Superintendent, as well as of the said County Road Committee, the purchase of an automobile for their use was in the interest of economy, for the procurement of more thorough inspection of the building of the new roads contemplated by the act in question."

The courts in the two cases discussed above had little difficulty in finding authority in the respective County governing bodies to furnish automobiles to County officers when it was apparent that such automobiles were necessary for the proper performance of official duties. There should be less difficulty in the instant situation since Section 4838, *supra*, specifically states that the County Surveyor shall be furnished with the equipment necessary to perform his duties. Since such duties cannot possibly be performed without the use of an automobile, I hold that the County Commissioners have authority to furnish the County Surveyor with an automobile.

I agree with the former Attorney General's Opinion in that a County Board of Commissioners is an executive body of limited powers and must in every instance justify its action by reference to the provisions of law defining and limiting its powers. However, it is also the rule that where the mode of exercise of a power granted is not prescribed, the Board has discretion to adopt any mode reasonably well adapted to the end proposed. *Morse v. Granite County*, 44 Mont. 78, 110 Pac. 286; *State ex rel. Thompson v. Gallatin County*, 184 Pac. (2d) (Mont.) 998. It is my opinion that the case at hand falls within the purview of the latter rule.

I do not attribute any weight to the contention set forth in Opinion No. 415, Volume 19, *supra*, that Section 4884.1, Revised Codes of Mont., 1935, as amended by Chapter 121, Laws of 1941, prohibits the Board of County Commissioners from buying an automobile for the use of a County official. The prohibition of Section 4884.1, *supra*, as now amended by Chapter 93, Laws of 1949, refers only to the use of privately owned vehicles and provides that such privately owned vehicles may only be used if transportation by railroad or bus is not suitable. We are concerned in the instant case with the purchase of a County vehicle and the prohibition of Section 4884.1, *supra*, as amended, with respect to privately owned vehicles is not applicable.

It is my opinion, in view of the requirement of the statutes, that the County Surveyor be provided with the equipment necessary to enable

him to perform his duties, that a Board of County Commissioners has the authority to purchase an automobile for the official use of the County Surveyor.

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