

Opinion No. 40.**County Commissioners, Powers of—
Civic Center Commission.**

HELD: A Board of County Commissioners, in the absence of intervening rights of third persons, may dissolve a Civic Center Commission created by the board under Section 16-1008A, R. C. M., 1947.

September 1, 1953.

Mrs. Loretta L. Sullivan,
Chairman
Board of County Commissioners
Silver Bow County
Butte, Montana

Dear Mrs. Sullivan:

You have asked my opinion as to whether "the Board of County Commissioners have the authority to dissolve the Civic Center Commission."

You have submitted these facts: The Civic Center Commission was created by resolution of the Board of County Commissioners on June 6, 1951, pursuant to the provisions of Section 16-1008, R. C. M., 1947, as amended by Chapter 5 of the Laws of 1949; the Civic Center Commission has never entered alone into any contracts—all contracts have been entered into by the Board of County Commissioners and the manager of the Civic Center; all claims and expenditures are authorized and signed only by the Board of County Commissioners; a contract has been made for the services of a manager; and this contract has been signed by the Chairman of the Civic Center Commission, the Chairman of the Board of County Commissioners and the manager; and members have been appointed to the Civic Center Commission for terms as provided in the statute.

It is a fundamental proposition of law that a Board of County Commissioners has such powers, and such powers only, as are expressly or impliedly conferred by the Constitution or statutes, or which arise by necessary implication from those expressly granted (*American Surety Co. of New York vs. Clarke*, 94 Mont. 1, 20 Pac. (2d) 831; *Lewis vs. Petroleum County*, 92 Mont. 563, 17 Pac. (2d) 60; *Yellowstone Packing Co. vs. Hays*, 83 Mont. 1, 268 Pac. 555). The power to dissolve the commission is not specifically granted by Section 16-1008A, *supra*, and the question is whether or not the power exists by implication.

It is also a fundamental proposition that where the rights of third parties have not intervened, a county board may modify or repeal its acts when such acts are legislative, administrative, or ministerial in their nature (20 C. J. S., *Counties*, Sec. 93, p. 872). In the case of *State ex rel. Peninsula Security Co. vs. Board of County Commissioners*, 62 Mont. 69, 202 Pac. 1108, the Supreme Court of Montana said:

"If the board of county commissioners had discretion in the matter in the passing of the resolution which was passed for the establishment of the fire district of Square Butte and authorizing the levy of the tax upon the property within that district, it also had the discretion to rescind that action, providing that no rights had become vested by reason of the passing of the resolution."

According to the rule of this case, if no rights of third parties have become vested and would be cut off by the action of the Board in dissolving the Civic Center Commission, the Board may dissolve it.

There are no intervening rights which would be cut off by the dissolution. All contracts, having been made with the Board of Commissioners, would be unaffected. The contract of the manager would remain in effect, just as would the other contractual obligations. The only substantial question involves the rights of the members of the Civic Center Commission to remain in office for the full terms to which they were appointed.

A county empowered by the legislature to create an office may, if unrestricted, abolish it (*State vs. Hudson County*, 53 N. J. L. 585, 22 Atl. 56; *Hatfield vs. County Ct.*, 80 W. Va. 165, 92 S. E. 245; 4 A. L. R. 224, 42 Am. Jur. Public Officers, §33, p. 905). Tenure of office does not prevent a genuine abolition of the office, and the incumbent has no vested right in the office (*Topping vs. Houston*, 94 Neb. 445, 143 N. W. 796).

It is therefore my opinion that a Board of County Commissioners, in the absence of intervening rights of third persons, may dissolve a Civic Center Commission created by the Board under Section 16-1008A, R. C. M., 1947.