

Opinion No. 41.

**Boards of County Commissioners—
Contracts—Private Individuals—
Duties of County Officers.**

HELD: The Board of County Commissioners may not contract with a private individual to perform the services of a county accountant or bookkeeper, as those duties are by law made the duties of the office of County Clerk and Recorder.

September 5, 1953.

Mr. William M. Black
County Attorney
Toole County
Shelby, Montana

Dear Mr. Black:

You have requested my opinion as to whether the Board of County Commissioners may hire a private individual to act as bookkeeper for the county.

The facts presented state that the Board of County Commissioners accepted the resignation of the Deputy Clerk and Recorder and hired the same person to do the bookkeeping and accounting for the county. Further, the facts state that as Deputy Clerk and Recorder, the individual's duties were those of bookkeeping for the county in addition to other deputy work. The

individual's salary as Deputy Clerk and Recorder was considerably lower than the salary now contracted for.

The question is well settled that the Board of County Commissioners may contract to hire work done that is necessary to its care and improvement of the affairs of the county. *Arnold vs. Custer County*, 83 Mont. 130, 147, 269 Pac. 396. In the exercise of this power, the Board of County Commissioners is controlled by this consideration; that the board is without authority to contract with private individuals for work to be done that by law is the duty and work of some county official. *Kelly vs. Silver Bow County*, 125 Mont. 272, 223 Pac. (2d) 1035; *Arnold vs. Custer County*, supra; *Judith Basin County vs. Livingston*, 89 Mont. 438, 442, 298 Pac. 356. No question arises here by virtue of the fact that the individual involved resigned as a deputy county officer to be hired as an employee of the county. Nor does any question arise as a result of the salary as Deputy Clerk and Recorder being lower than the contracted employment salary.

The principal question is whether or not the duties of bookkeeper are by law the duties of the County Clerk or some other county officer. (*Arnold v. Custer County*, supra, and *Judith Basin County vs. Livingston*, supra.) The fact that the individual performs such duties as Deputy Clerk is not necessarily material, but if the duties of bookkeeper or accountant for the county are the legally imposed duties of the County Clerk or one of the other county officers, the question becomes paramount. Section 16-2917, R. C. M., 1947, set forth here in part, specifies the duties of the County Clerk:

"Duties of County Clerk. The county clerk must:

* * *

"3. Draw warrants on the county treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county, which have been legally examined, allowed, and ordered paid by the board of county commissioners; also for all debts and demands against the county, when the amounts are

fixed by law, and which are not directed to be audited by some other person or tribunal; which warrants shall be signed by the county clerk and the chairman of the board of county commissioners, excepting warrants drawn on the redemption fund;

"4. He must keep accounts current with the treasurer, and when any person deposits with the county treasurer any money paid into the treasury, the county clerk shall be furnished by the treasurer with a duplicate of the receipt issued to such person, which duplicate receipt shall be filed in the office of the county clerk, and such county clerk shall charge the treasurer with the amount thereof.

"5. Make the annual statement as prescribed in Section 16-2924."

Subsections 3, 4 and 5, set forth above, clearly indicate that the County Clerk and Recorder is the accountant or bookkeeper for the county and the duties of the clerk and his deputies as such are by this law so prescribed.

It is therefore my opinion that the Board of County Commissioners may not contract with a private individual to perform the services of a county accountant or bookkeeper, as those duties are by law made the duties of the office of County Clerk and Recorder.