Opinion No. 85.

Counties — County Commissioners — Power to Compromise Litigation— Royalty Reservations.

HELD: A board of county commissioners may not compromise litigation by granting to the adverse party a portion of the county's reserved royalty interest in oil, gas, or other minerals.

July 30, 1954.

Mr. James P. Lucas
County Attorney
Custer County
Miles City, Montana

Dear Mr. Lucas:

You have requested my opinion upon the following question:

> When a board of county commissioners has made a sale of tax deed lands, reserving a royalty of 6¼% of the oil, gas, and other minerals contained in the land, may it later compromise litigation involving the validity of the deed or reservation by granting to the adverse party a portion of the county's reserved royalty interest?

It has been repeatedly held by our Supreme Court that a county is a political subdivision of the state for governmental purposes. It has only those powers expressly conferred upon it by statute, and those necessarily implied from those granted. Where a reasonable doubt exists as to the existence of a particular power, it must be resolved against it. (Sullivan v. Big Horn County, 66 Mont. 45, 212 Pac. 1105; Strange v. Esval, 67 Mont. 301, 215 Pac. 807.) The same rule applies, of

necessity, to the board of county commissioners. (Ainsworth v. McKay, 55 Mont. 270, 175 Pac. 887.) Boards of county commissioners are "inferior tribunals of special and limited jurisdiction, and their action must affirmatively appear to be in conformity with some provision of law conferring power on them, expressly or by implication, or it will be held to be without authority." (State ex rel. Lambert v. Coad, 23 Mont. 131, 57 Pac. 1092; State ex rel. Gillett v. Cronin, 41 Mont., 293, 109 Pac. 144; Morse v. Granite County, 44 Mont., 78, 119 Pac. 286.)

No specific statutory provision gives boards of county commissioners power to compromise litigation in Montana. However, it has been held in some other states that boards of county commissioners have the power to compromise litigation as a necessary incident of their power to manage the business affairs of the county. (20 C.J.S. Counties, §233, p. 1114. In those states the power has been held to be subject to the limitation contained in constitutional provisions such as Article V, Section 39, of the Montana Constitution, which provides in part:

> " . . . No obligation or liability of any person, association or corporation, held or owned by the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed, or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury.
> * * *."

Our Supreme Court, in the cases of Sanderson v. Bateman, 78 Mont. 235, 253 Pac. 1110; Yellowstone Packing Company v. Hays, 83 Mont. 1,268 Pac. 555; and Shull v. Lewis and Clark County, 93 Mont. 408, 19 Pac. (2d) 901, likewise held that this limitation was binding upon counties and boards of county commissioners, preventing the release or compromise of taxes owed to the county.

The rule as applied in those jurisdictions where it has been given its widest application was stated in the case of Roberts v. McLean County, 244 Ky. 596, 51 S.W. (2d) 897, where it was held that under such a constitutional provision, the power of the county board to compromise is limited to settlement of the amount owing on an unliquidated claim. The court said:

> "Section 52 of the Constitution provides: 'The general assembly shall have no power to release, extinguish, or authorize the releasing or extinguishing, in whole or in part, the indebtedness or liability of any corporation or individual to this commonwealth, or to any county or municipality thereof.'
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> **An examination of the cases construing this section will show that the power to compromise has been denied in every case where the liability of the taxpayer or officer was fixed and certain,** but that the court was careful to point out that the constitution did not forbid the settlement of an unliquidated claim." (Emphasis supplied.)

This theory could obviously not apply to royalty reservations which are fixed and certain in amount from the time of execution. Disposition of county real property is rigidly controlled by statute, and where the manner of disposing of the property is set out in the statute, the method is mandatory and exclusive. (Franzke v. Fergus County, 76 Mont. 150, 245 Pac. 962.) It was held, 20 Reports and Official Opinions of the Attorney General 252, No. 198 that, under our statutes, the county has no power to sell or otherwise dispose of its reserved royalty interest. Since the county and its commissioners lack the authority to dispose of the royalty interest at a sale and for value, it necessarily follows that no portion of the county's reserved interest may be given in exchange for the settlement of a lawsuit.

It is therefore my opinion that a board of county commissioners may not compromise litigation by granting to the adverse party a portion of the county's reserved royalty interest in oil, gas or other minerals.