

Opinion No. 99.**District Health Units—Boards of
County Commissioners—Con-
tracts—Personal Lia-
bility.**

HELD: The district health departments may enter into rental contracts for office space and the like for periods in excess of their budget terms. Such leases or contracts may be executed by the board member authorized by the board to so execute, and no personal liability attaches to that party in the event of premature breach or cancellation occasioned by unit dissolution.

October 20, 1954.

Dr. G. D. Carlyle Thompson
Executive Officer
State Board of Health
Helena, Montana

Dear Mr. Thompson:

You have requested my opinion on the following question:

“May district health departments, established under Title 69, Chapter 8, Revised Codes of Montana, 1947, sign contracts such as rental leases that extend beyond their current budget period? If so, who may sign such a contract for the district board, and does such a person signing such a contract assume personal liability in the event the district board of health is dissolved through action of the participating agencies?”

You further advise that it is necessary to rent office space for the districts in privately owned buildings, as no public owned space is available.

Sections 69-805 and 69-806, R. C. M., 1947, give legislative authorization to the several boards of county commissioners to pool their resources and form district health units. These sections likewise authorize the delegation of powers from the several boards of county commissioners to the several district health boards and health officers.

Section 69-806, *supra*, states in part:

“ * * * ”

“The district board of health shall designate the location and provide the office for the district health department and furnish it with the necessary equipment.

“ * * * ”

It is immediately apparent that it is the responsibility of the district board to obtain adequate office space for the unit.

The statute is silent as to which member of the board should actually execute any rental contract or lease on behalf of the board. It is fundamental Montana law that when a power is conferred upon a board but the mode in which the authority is to be exercised is not indicated, the board in its discretion may select any appropriate method or course of procedure. *State ex rel. Blair v. Kuhr*, 86 Mont. 377, 283 Pac. 758; *Simpson v. Silver Bow County*, 87 Mont. 83, 285 Pac. 195; *State ex rel. Thompson v. Gallatin County*, 120 Mont. 263, 184 Pac. (2d) 998.

As a general rule the board authorizes its chairman or president to execute such contracts. The person executing the contract assumes no liability in the event of breach by a dissolution of the unit. The persons contracting with the unit are charged with knowledge or notice of the character and constitution of the entity with which they deal. *Stange v. Esva*, 67 Mont. 301, 215 Pac. 807. The party dealing with the unit is presumed to contract with the knowledge of possible dissolution of the unit and it is doubt-

ful if even the participating agency would be obligated in the event of premature cancellation.

In answer to the final portion of your question, may the board enter into a contract extending beyond the current budget period, reference is made to *Bennett v. Petroleum County*, 87 Mont. 436, 288 Pac. 1018. The pertinent language of the case is herein set out:

“ . . . The statute authorizes the board of county commissioners as a legally constituted entity, acting for the county, among other things, to lease real property necessary for use of the county, and to provide suitable rooms for county purposes when there are no necessary county buildings. (Sec. 4465, Rev. Codes 1921, as amended by Chap. 38, Laws of 1929.) In this respect, there is no further limitation or restriction placed on the board, and no time limit fixed as to the term of any lease of such property. While the board of county commissioners, in dealing with county business, is possessed of only such authority as is especially conferred upon it by statute or necessarily implied (*State ex rel. Blair v. Kuhr*, 86 Mont. 377, 283 Pac. 758) here the authority is expressly conferred to lease a building for county purposes when no such building is owned by the county, and is necessary. The statute specifically confers the power to so contract upon the board of county commissioners, the body existing at the time, and the mere fact that the term of office of a member of the body which so contracts may expire before the contract, does not in any manner affect its validity. Were the rule of law otherwise, the business of counties would be very greatly hampered and at times suspended, with resulting damage. The board of county commissioners functions for the municipal corporation in its authorized powers as a continuous body, and while the personnel of its membership changes, the corporation continues unchanged. The county has power to contract, and its contracts are the contracts of its board of county commissioners, not of the individual members thereof . . . ”

From the above it is clear that the district health board, having been by statute delegated the powers of the several boards of county commissioners with respect to health districts, can enter into contracts for the rental of office space and the like for periods extending at least beyond the terms of office of the members of the various boards. This period is obviously extended beyond the budget term.

It is, therefore, my opinion that the district health departments may enter into rental contracts for office space and the like for periods in excess of their budget terms; that such leases or contracts may be executed by the board member authorized by the board to so execute, and that no personal liability attaches to that party in the event of premature breach or cancellation occasioned by unit dissolution.