

Opinion No. 104**Counties — Boards of County
Commissioners Not Authorized to
Establish Parking Areas**

HELD: A board of county commissioners does not have the authority or power to acquire or construct an automobile parking area for the use of an unincorporated town.

January 4, 1957

Mr. Norman C. Robb
County Attorney
Park County
Livingston, Montana

Dear Mr. Robb:

You requested my opinion concerning the authority of the county commissioners of your county to construct a parking area for the use of an unincorporated town. You advised me that the proposed parking area is adjacent to the unincorporated town but is located outside the boundaries of the county and is owned by the United States Government. You also asked if the board of county commissioners has the power to expend county funds to construct and maintain a parking area for an unincorporated town which parking area would be within the boundaries of Park County.

In answering your questions, it is important to remember that a board of county commissioners has limited powers and the rule expressed in *Lewis v. Petroleum*, 92 Mont. 563, 17 Pac. (2d) 60, is pertinent here.

This rule reads as follows:

“The principle is well established that the board of county commissioners may exercise only such powers as are expressly conferred upon it or which are necessarily implied from those expressed, and

that where there is a reasonable doubt as to the existence of a particular power in the board of county commissioners, it must be resolved against the board, and the power denied. . . ."

Under Section 16-804, R.C.M., 1947, a county has power "To purchase and hold lands within its limits." Also, the county commissioners are specifically granted the power under Section 16-1004, R.C.M., 1947, "To lay out, maintain, control and manage public highways."

The authority to pass parking regulations for use in unincorporated towns and villages is given to the board of county commissioners under Section 16-1002, R.C.M., 1947. While it is true that the above statute recognizes the authority of the board of county commissioners in regard to parking problems yet there is no specific authority for the commissioners to establish parking areas.

In contrast to the above definitions of the powers of the county commissioners in governing unincorporated towns, the legislature granted to incorporated cities and towns the right to purchase parking areas within the corporate limits of the municipality in Section 11-986, R.C.M., 1947. Chapter 223, Laws of 1951, was enacted for the purpose of allowing incorporated cities to issue revenue bonds to acquire off street parking facilities. The concern of the Legislature evidenced by the enactments for cities and towns makes it apparent the power to establish parking areas was not granted to counties.

In the absence of any express statutory authority a doubt is raised which precludes a county from establishing parking areas. Also there is no necessary implication in any of our laws which would permit such action. It is not necessary to consider your second question.

Sections 32-501 to 32-527, R.C.M., 1947, permit the board of county commissioners to establish improvement districts for unincorporated

towns in a county. Such local improvement districts are for the construction of roads and there is no authorization for the creation of parking areas. Parking areas not being necessary to the construction of roads and there being no mention of parking areas in these code sections, it must be concluded that parking areas cannot be established by the special improvement district methods.

It is therefore my opinion that a board of county commissioners does not have the authority or power to acquire or construct an automobile parking area for the use of an unincorporated town.

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