

Opinion No. 65

**Counties—
Boards of County Commissioners,
Powers Of—
City-County Planner, Duties Of**

HELD: 1. A Board of County Commissioners may contract for services or hire employees and make county expenditures for the gathering of information which will aid it in its duties of maintaining highways and regulating the traffic thereon.

2. A Board of County Commissioners has the power to hire employees or make contracts for the gathering of information necessary to determine the recreational and park needs of the county and the area available to satisfy the needs.

3. A Board of County Commissioners has the power to hire employees or make contracts for the gathering of information necessary to determine the need for additional schools or school districts within the county.

4. A Board of County Commissioners may contract for services or hire employees to gather information and prepare "land-use" maps for the use of the county assessor and other taxing officials.

5. A Board of County Commissioners may contract for services or hire employees to gather information about ground water conditions to aid in exercising its powers over the location and laying of underground pipelines.

6. A Board of County Commissioners may contract for services or hire employees to gather information necessary to the exercise of its powers over the health and welfare of the county under Sections 69-703, 69-802, 69-803, 16-1008 and 16-1008A, R.C.M., 1947.

7. A Board of County Commissioners may hire expert help, where needed, to determine whether plats submitted to them conform to statutory requirements, and the provisions of Section 11-602(9), R.C.M., 1947.

8. Studies necessary to the establishment of zoning districts may be undertaken by a planning and zon-

ing commission established under Sections 16-4101, et seq. R.C.M., 1947, but not by the Board of County Commissioners.

9. The Board of County Commissioners may contract for or hire employees for the gathering of information necessary to the exercise of its discretion over rural improvement districts formed under Sections 16-1601 through 16-1632, R.C.M., 1947, and fire districts formed under Sections 11-2008 and 11-2019, R.C.M., 1947; however, the board has not power to act until its jurisdiction has been invoked by petition of the requisite number of property owners.

March 13, 1956

Mr. John J. Cavan, Jr.
County Attorney
Yellowstone County
Billings, Montnaa

Dear Mr. Cavan:

You have requested my opinion upon the following subject:

May Yellowstone County legally expend monies for the salary of a city-county planner to gather information on certain subjects related to county government to aid the county commissioners in the discharge of their duties?

It is a general proposition that counties are subdivisions of state government with fixed powers and duties, and any action taken by the board of county commissioners must be justified by the provisions of statutes which grant, define and limit their powers (State vs. McGraw, 74 Mont. 152, 240 Pac. 812).

Counties and their boards of commissioners are granted a wide range of specific powers, plus authority to do such other things as are necessary to the full discharge of their granted powers (Section 16-1027, R.C.M., 1947). If the statutes creating a power do not prescribe the manner in which it is to be exercised, the board is free to adopt any reasonable means for carrying out the duties imposed (State ex rel. Blair vs. Kuhr, 86 Mont. 377, 283 Pac. 758; State ex rel. Lambert vs. Coad, 23

Mont. 131, 57 Pac. 1092; State ex rel., Gillett vs. Cronin, 41 Mont. 293, 109 Pac. 144; Morse vs. Granite County, 44 Mont. 78, 119 Pac. 286; Hershey vs. Neilson, 47 Mont. 132, 131 Pac. 30).

The board of county commissioners may in the proper exercise of its powers employ such personnel and make such contracts as are necessary to the proper performance of the function at hand; but it may not hire employees or make contracts for the performance of duties placed by statute in the hands of another county officer (State ex rel. Blair vs. Kuhr, *supra*; Arnold vs. Custer County, 83 Mont. 130, 269 Pac. 396). However, the board's power to hire employees to aid in its functions is not to be denied because the work performed may incidentally be of aid to the other county officers (Simpson vs. Silver Bow County, 87 Mont. 83, 285 Pac. 195). The right of boards of county commissioners to hire employees or make contracts for gathering information necessary to the proper discharge of its duties has been uniformly upheld in Montana (State ex rel. Blair vs. Kuhr, *supra*; Arnold vs. Custer County, *supra*; Simpson vs. Silver Bow County, *supra*; Ransom vs. Pingel, 104 Mont. 119, 65 Pac. (2d) 616).

In your letter of request you have outlined thirteen fields in which the commissioners desire to gather information for possible future action by the board. In each of these cases, it must be determined whether the information is necessary to the performance of some function which the board is authorized or directed to perform, and whether the performance would infringe upon the statutory or constitutional duties of another elected officer.

Certain of these functions are expressly placed within the power of the board of county commissioners by constitutional or statutory mandate.

You have asked, first, whether the board of commissioners may expend monies, hire employees or make contracts for a survey to determine the traffic needs and proper means of traffic control in the county.

Section 16-1004, R.C.M., 1947, provides in part:

"The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To lay out, maintain, control and manage public highways, ferries and bridges, within the county, and levy such tax therefor as required by law; . . ."

Section 32-302, R.C.M., 1947, gives the board of county commissioners broad powers and duties over roads and highways in the county and requires that the commissioners be informed upon highway matters:

"The boards of county commissioners of the several counties of the state have general supervision over the highways within their respective counties.

* * *

2. They may, in their discretion, provide and order the county surveyor, or if the county surveyor is incompetent, some other competent surveyor designated by the board, to prepare suitable plat books and have recorded therein with the county clerk a full description of every public highway within the county, showing each course by bearing and distance, with a full and complete map thereof, together with a record of all other proceedings with reference to the same.

3. They must cause to be surveyed, viewed, laid out, recorded, opened, worked, and maintained such highways as are necessary for public convenience as in this act provided, and cause to be erected and maintained thereon guideposts, as provided in this act.

* * *

8. They may, in their discretion, cause to be done whatever may be necessary for the best interests of the roads and road districts of their several counties."

These sections make the gathering of information relative to highway needs a duty of the board of com-

missioners. It may, therefore, contract for services or hire employees and make county expenditures for the gathering of information which will aid it in its duties of maintaining highways and regulating traffic thereon.

Your second question concerns the legality of county expenditures for a survey to determine the recreational and park needs of the county and the area available to satisfy the needs.

Section 11-602, sub-paragraph 9, R.C.M., 1947, provides that, in certain instances, the county commissioners must inspect plats and determine the size and location of parks and playgrounds. Section 62-101, R.C.M., 1947, gives the county power and authority to acquire land for such public purposes:

"The several counties of this state are hereby authorized and empowered to acquire by purchase, grant, deed, gift, devise or condemnation, or otherwise, lands suitable for public camping and public recreational purposes, civic centers, youth centers, museums, recreational centers and any combination thereof, or may lease such land tracts, each of which shall be so situated as to offer ready access to a public highway. Nothing herein contained shall be construed as amending or repealing sections 16-1163 to 16-1165."

The board of commissioners, in carrying out its duties under these sections, has the power to hire employees or make contracts for the gathering of necessary information upon which to base its actions and the exercise of its judgments (State ex rel. Blair vs. Kuhr, *supra*; Arnold vs. Custer County, *supra*).

Your next question concerns the authority of the board of commissioners to make a survey to determine the need for additional schools or school districts within the county, and particularly to make provisions for new densely populated county areas.

Section 16-1002, R.C.M., 1947, provides in part:

"The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To divide the counties into township, school, road and other districts required by law, change the same, and create others as convenience requires, by consolidation of two (2) or more townships, or otherwise."

* * *

Under this section, the board clearly has the power to gather the information necessary to enable it to properly carry out the duties delegated to it by that section.

Your next inquiry concerns the authority of the board of county commissioners to prepare a "land-use" map with recommendations for proper zoning requirements of potential and proposed zoning areas within the county.

The authority of counties over zoning is set out in Sections 16-4101 to 16-4107, R.C.M., 1947, inclusive. The scope of county authority over planning and zoning will be considered later in this opinion. However, certain sections authorize the preparation of maps by the county commissioners, and those sections clearly authorize proper charges for this purpose. Section 84-509, R.C.M., 1947, provides that the board of commissioners must furnish maps to the assessor for his use:

"The board of county commissioners must provide maps for the use of the assessor, showing the private lands owned or claimed in the county, and if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages or school districts may in like manner be provided. The cost of making such maps is a county charge, and must be paid from the county general fund."

The exact type of maps to be prepared is not prescribed in the statutes, however, the commissioners have wide powers over methods of listing property under tax statutes, and whatever method they find suitable is the one which should be

followed. In *Ransom vs. Pingel*, supra, our Supreme Court held that a tract index of all property in the county could be installed and maintained if the commissioners found it necessary for proper maintenance of tax records.

"If the county commissioners have the right to make a contract to obtain this information, we see no reason why they may not in their discretion, under facts such as those here involved, install a tract index as a convenient, safe, and reliable means of procuring and having available at all times the necessary information in the office of the county clerk to enable him to perform his duties with respect to tax deeds. It is well settled in this state that where the statute confers a power, but the mode of its exercise is not prescribed, any appropriate means of carrying it out may be adopted. (*Morse v. Granite County*, 44 Mont. 78, 119 Pac. 286; *Fisher v. Stillwater County*, 81 Mont. 31, 261 Pac. 607; *State ex rel. Blair v. Kuhr*, 86 Mont. 377, 283 Pac. 758; *Simpson v. Silver Bow County*, 87 Mont. 83, 285 Pac. 195). In the Arnold case, supra, it was said: 'Unless prohibited by law, a county board may adopt such means as in its judgment shall be expedient in assisting county officers properly to discharge the duties of their offices.' (15 C.J. 459.)"

Your next question concerns the authority of the commissioners to conduct a study of ground water conditions to aid in the laying of underground pipes.

Section 16-1114, R.C.M., 1947, gives the commissioners power to grant or withhold permission to install underground pipes for the conveyance of water, gas or other necessities:

"That the board of county commissioners of any county of the state of Montana shall have the power and authority to grant to any person, association or corporation the right to construct and maintain in, along and under any public road or highway within such county, any pipe line for the conveyance of natural or artificial gas,

water or any other substance, for the use of any county, city or town, or the inhabitants thereof; provided, that, when constructed, such pipeline shall not now or in the future interfere with the surface use of such road or highway; . . ."

This statute is aimed at protecting the public roads and rights-of-way, as well as allowing the commissioners a certain amount of control over the location of public utility pipelines. Since information as to the proper means of location of these lines is necessary to the correct exercise of the commissioners' discretion, the gathering of any information the commissioners believe to be pertinent is authorized under Section 16-1027, supra.

Your next inquiry concerns the authority of the board of commissioners to conduct a study of the community facilities needed to rehabilitate areas which are becoming slum and problem areas.

The board of county commissioners is vested with certain powers over health and welfare within the county and the furnishing of health and welfare facilities.

In addition to their duties as members of the county board of health under Section 69-703, R.C.M., 1947, the commissioners are empowered to investigate the need for full-time county health units (Section 69-802, R.C.M., 1947) or merged city-county health service units (Section 69-803, R.C.M., 1947).

The board of commissioners is also authorized to determine the need for youth centers, recreational centers, park buildings, etc. under Sections 16-1008 and 16-1008A, R.C.M., 1947. The powers of the commissioners under these sections authorize the making of studies which the commissioners deem necessary to the proper exercise of these health and welfare functions.

Your next question concerns whether the commissioners may have a study made of plats presented to them for filing to determine whether the plats conform to the statutory requirements, and whether

the land platted has been divided in such a way as to conform to the best interests of the county.

Section 11-602, sub-paragraph 9, R.C.M., 1947, gives the commissioners power to suggest placements for parks and to diminish the area required by statute for parks when they consider it necessary. In any case where it is necessary that the commissioners have expert advice upon the subjects embraced in this statute, they may make expenditures for that purpose.

You have also asked whether statutory authority exists to make a survey of community growth trends and the problems to be raised by community decentralization, in order to aid in proper zoning of industrial and residential areas and in making determination of needs for fire protection, water and utility supplies and control of air and water contamination.

Section 16-4101, et seq. gives the board of county commissioners power to set up a planning and zoning commission of which they are ex officio members. This commission may hire employees and do all things necessary to make and adopt a development pattern for the physical and economic development of the planning and zoning district (Section 16-4102, R.C.M., 1947). The only authority over zoning granted to county authorities is contained in this chapter (Sections 16-4101 to 16-4132, R.C.M., 1947).

The commissioners may set up a planning and zoning commission only "upon petition of sixty per centum (60%) of the freeholders affected thereby" (Section 16-4101, R.C.M., 1947).

Studies of industrial and residential development necessary in establishing zoning districts and regulations may be undertaken by the planning and zoning commission but not by the board of county commissioners.

The authority of the board of county commissioners over fire protection, utilities, water and sewage is limited to that granted them by statutes in connection with their duties over rural improvement districts

(Sections 16-1601 through 16-1632, R.C.M., 1947) and fire districts (Sections 11-2008 and 11-2019, R.C.M., 1947). In order to properly exercise its powers under these sections, the county board may contract for or hire employees for the gathering of information necessary to a proper exercise of its discretion; however, the board has no power to act until its jurisdiction has been invoked by petition of the requisite number of property owners (see Section 11-2008, R.C.M., 1947, and Section 16-1601, R.C.M., 1947).

It is therefore my opinion:

1. A board of county commissioners may contract for services or hire employees and make county expenditures for the gathering of information which will aid in its duties of maintaining highways and regulating the traffic thereon.
2. A board of county commissioners has the power to hire employees or make contracts for the gathering of information necessary to determine the recreational and park needs of the county and the area available to satisfy the needs.
3. A board of county commissioners has the power to hire employees or make contracts for the gathering of information necessary to determine the need for additional schools or school districts within the county.
4. A board of county commissioners may contract for services or hire employees to gather information and prepare "land-use" maps for the use of the county assessor and other taxing officials.
5. A board of county commissioners may contract for services or hire employees to gather information about ground water conditions to aid in exercising its powers over the location and laying of underground pipelines.
6. A board of county commissioners may contract for services or hire employees to gather information necessary to the exercise of its powers over the health and welfare of the county under Sections 69-703, 69-802, 69-803, 16-1008 and 16-1008A, R.C.M., 1947.

7. A board of county commissioners may hire expert help, where needed, to determine whether plats submitted to them conform to statutory requirements, and the provisions of Section 11-602(9), R.C.M., 1947.

8. Studies necessary to the establishment of zoning districts may be undertaken by a planning and zoning commission established under Sections 16-4101, et seq., R.C.M., 1947, but not by the board of county commissioners.

9. The board of county commissioners may contract for or hire employees for the gathering of information necessary to the exercise of its discretion over rural improvement districts formed under Sections 16-1601 through 16-1632, R.C.M., 1947, and fire districts formed under Sections 11-2008 and 11-2019, R.C.M., 1947; however, the board has no power to act until its jurisdiction has been invoked by petition of the requisite number of property owners.

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