

**Opinion No. 51****Schools and School Districts—Budgets—Implied Contract for Services**

**Held: An accountant who performed services for the county superintendent of schools when there was a budget item for clerical help may be paid for the services performed at a rate which does not exceed 90% of the salary of the county superintendent of schools.**

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May 20, 1958

Mr. Chester L. Jones  
County Attorney  
Madison County  
Virginia City, Montana

Dear Mr. Jones:

You have requested my opinion concerning the validity of a contract entered into by the county superintendent of schools and an accountant to prepare the annual report of the county superintendent to the state superintendent of public instruction. You advised me that the accountant completed the work and submitted a bill for the number of hours he worked.

It is stated in your letter that the county budget for the fiscal year 1957-58 provided in the county superintendent's budget salary expenditures: "officers—\$2956.00, clerk—\$800.00."

The authority of a county officer to enter into a contract is limited by his statutory authority and a person dealing with him does so at his own risk. In *Pue vs. County of Lewis and Clark*, 75 Mont. 207, 243 Pac. 573, the opinion quoted with approval the following rule:

"The general rule is well settled and is constantly enforced that one who makes a contract with a municipal corporation, is bound to take notice of limitations on its power to contract and also of the power of the particular officer or agency to make the contract. That is, persons dealing with a municipal corporation through its agent are bound to know the nature of the agent's authority."

It is the duty of the county superintendent of schools, under the provisions of Section 75-1526, RCM, 1947, to "make and transmit an annual report to the superintendent of public instruction." A recent Montana case *Kelly vs. Silver Bow County*, 125 Mont. 272, 233 Pac. (2nd) 1035, said:

"The rule is that the board of county commissioners may not enter into a contract to place the performance of certain duties upon a different person than the official chargeable by law with the performance thereof."

From the foregoing it must be concluded that the contract to perform duties imposed on the county superintendent cannot by contract be performed by a person who is neither an official nor an assistant.

The services performed by the accountant were done at the request of the county superintendent of schools and the budget provided an item for clerical assistance. There is no suggestion of any facts which would indicate the services performed were not beneficial to the schools of the county and assisted the county superintendent in the discharge of her duties. If we assume that the accountant was a temporary assistant the compensation he could receive would, under Section 75-1528, RCM, 1947, be limited to 90% of the salary of the county superintendent. In *Thompson vs. Gallatin County*, 120 Mont. 263, 184 Pac. (2nd) 998, our court held that the board of county commissioners may fix the compensation of an assistant or deputy in the budget. Here it does not appear that the compensation was fixed in precise terms yet an appropriation was made available for clerical help to assist the county superintendent to discharge her duties. In *Hicks vs. Stillwater County*, 84 Mont. 38, 274 Pac. 296, it was held that benefits received by a county raise an implied promise to pay for the same. The court expressed a rule which is helpful here in the following language:

"It is well settled that, in a proper case, a municipal corporation may be liable on an implied, as distinguished from an express, contract, although mere benefits received \* \* \* will not ordinarily create an implied promise to pay. Thus if the municipality has power to contract therefor by express contract, and the

contract is not against public policy, and there are not statutory or charter provisions limiting the mode of execution of a like express contract, it will be liable on an implied contract where it has received benefits, either in the entire absence of any contract or where an express contract is invalid because of mere irregularities."

A more recent case which recognized the equitable duty of a county to reimburse for benefits received is that of First National Bank of Nashua vs. Valley County, 112 Mont. 18, 113 Pac. (2nd) 783, where the county was required to pay back money illegally borrowed. The court said:

"If the county was enriched by the transaction, then plaintiff's contention is correct. In other words, if the county got the use and benefit of the money borrowed from the plaintiff, then the cases hold that plaintiff is entitled to recover the money from the county, this even though the money was expended for an illegal purpose."

An express statute, Section 75-1528, RCM, 1947, would be violated if the accountant were allowed to recover compensation for his services in excess of 90% of the rate of pay of the county superintendent. It should be mathematically possible to compute the maximum amount which he could receive for his services and it would appear equitable and fair dealing if he were paid for his services.

It is therefore my opinion that an accountant who performed services for the county superintendent of schools when there was a budget item for clerical help may be paid for the services performed at a rate which does not exceed 90% of the salary of the county superintendent of schools.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General