

Opinion No. 58**Forestry, State Department of—Timber Lands, Classification and Appraisal.—County Commissioners, Powers of**

- Held:** 1. **The State Forestry Department may contract with counties for work to be done in classifying and appraising forest lands under Chapter 191, Laws of 1957 (Sections 84-429.7 through 84-429.13, RCM, 1947).**
2. **Employees of the State Forestry Department may be paid from state appropriations for work done on combined state and county projects and the state appropriated funds may be reimbursed with monies received from the counties.**

June 26, 1958

Mr. Gareth C. Moon
State Forester
Montana State University
Missoula, Montana

Dear Mr. Moon:

You have requested my opinion whether the State Forestry Department may pay the salaries of certain employees from state funds appropriated for timber sales and forest inventories and later reimburse these state funds from payments made by counties to the State Forestry Department for work done in timber land classification.

You have given me the following facts:

Chapter 191 of the Laws of 1957 (Secs. 84-429.7-84-429.13, RCM, 1947) made it the duty of the Boards of County Commissioners of the several counties of the State of Montana to classify and appraise taxable lands within their respective counties. One of the categories of lands to be so classified and appraised is timber land. The State Forestry Department is the only agency available in the state to do the necessary field work in this program.

The various counties wish to enter into contracts to pay the State Forestry Department for doing this work.

The same legislative session appropriated monies to the State Forestry Department for an inventory of the forest resources owned by the State of Montana and for the necessary field work in connection with timber sales on state lands (House Bill 467, Laws of 1957).

Since the work to be done under both of these programs is substantially identical in nature, a great saving to the state and counties can be made if the field work on all three programs is

done at the same time by crews working on all projects simultaneously.

The amount to be charged against the state and counties respectively will be determined periodically according to the number of acres of state and county land which has been surveyed at the time.

Since the proportionate share of expenses cannot be determined in advance, the only practical manner of payment of the Forestry Board employees is to pay them entirely from state funds and then to have the funds reimbursed from the monies paid by the counties when these payments are received.

Your question is then whether such an arrangement would be lawful.

Your request indicates that the contemplated arrangement would be very advantageous for both the state and the counties. It would permit entire areas to be surveyed as a single unit without the necessity of determining ownership of the various parcels of land in advance—a very time-consuming and expensive procedure.

There is no doubt that counties may contract with the State Forestry Department to do the work necessary for classification and appraisal of timber lands. The Boards of County Commissioners are required by Sections 84-429.7 through 84-429.13, RCM, 1947 (Sections 1 through 7, Chapter 191, Laws of 1957) to classify and appraise, and are authorized to pay all costs and expenses incurred from monies in the "Classification and Appraisal Fund" (Section 84-429.8, RCM, 1947). No particular method of carrying out the program is contained in the statute. Where the power is conferred on a Board of County Commissioners but the manner in which the power should be exercised is not indicated, the Board may select any appropriate course of procedure (*State ex rel. Thompson v. Gallatin County*, 120 Mont. 263, 184 Pac. (2d) 998). The obligation of the counties in this situation will be a contractual one and payment will be made as the work is billed. In the interim the Forestry Board employees must be paid from the two state funds indicated above. A portion of each payment will of necessity be chargeable to work done on behalf of the county. When this amount is deposited to the credit of the state fund from which it has been advanced each function will have been charged with its correct proportionate share of the cost.

The State Board of Forestry and the State Forestry Department are given wide discretion in the exercise of their statutory powers and duties (see Sections 28-101, et seq. RCM, 1947). In my opinion these powers include the power to pay employees from state funds while awaiting payment from counties for classification work, and to reimburse those state funds in the amount paid by the counties for the counties' proportionate share of the work.

It is, therefore, my opinion that the State Forestry Department may contract with counties for work to be done in classifying and appraising forest lands under Chapter 191, Laws of 1957 (Sections 84-429.7 through 84-429.13, RCM, 1947).

It is also my opinion that employees of the State Forestry Department may be paid from state appropriations for work done on combined state and county projects and that the state appropriated funds may be reimbursed with monies received from the counties.

Very truly yours,
FORREST H. ANDERSON
Attorney General