

Opinion No. 71**County Commissioners, Powers of—County Parks—Counties,
Firearms—Hunting, Parks**

Held: That the Board of County Commissioners may enact orders regulating hunting and the use of firearms within an area designated as a county park but they are without the power to provide a criminal penalty consisting of fine or imprisonment for violation of said order.

August 5, 1958

Mr. Robert Morrison
Hill County Attorney
Havre, Montana

Dear Mr. Morrison:

You have requested my opinion whether or not the Board of County Commissioners have the authority to enact ordinances regulating hunting and the use of firearms within an area designated as a county park and to provide a penalty for violation of said ordinance.

Section 62-101, RCM, 1947, provides for the acquisition of land by counties for public recreational purposes and provides:

"Acquisition of land for public recreational 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."

Section 16-804, RCM, 1947, enumerates the powers of the counties and provides in part 4:

"4. To make such orders for the disposition or use of its property as the interests of its inhabitants require."

Counties can only exercise such powers as are expressly granted by the state, together with implied powers necessary for execution of powers expressly conferred. *Hersey v. Nelson* (1913) 47 Mont. 132, 131 Pac. 30; *Edwards v. Lewis and Clark County* (1917) 53 Mont. 259, 165 Pac. 297; *Sullivan v. Big Horn County* (1923) 66 Mont. 45, 212 Pac. 1105; *State v. Kuhr*, 86 Mont. 377, 283 Pac. 758.

The legislature has granted the county the power to acquire lands for county parks and has given them the right to make orders for the use of its property. This would seem to be an express power granted by the state giving the county the right to enact orders regulating hunting and the use of firearms within an area designated as a county park.

The Revised Codes of Montana do not contain any provision giving the county or county commissioners the power to provide a criminal penalty consisting of fine or imprisonment for the violation of one of its orders. "Counties are statutory subdivisions of state, and, when they assume to act, authority therefore must be found in statutes." *Judith Basin County v. Livingston*, 89 Mont. 438, 298 Pac. 256. In view of this decision the county or county commissioners are without power to provide a criminal penalty since the legislature has not delegated this authority to them.

It is to be noted, however, that the county or county commissioners may provide such administrative penalties as removing violators from the park or banning them from using park facilities for a definite period of time since the board has the power to protect the county property and make orders for its use.

It is therefore my opinion that the Board of County Commissioners may enact orders regulating hunting and the use of firearms within an area designated as a county park but they are without the power to provide a criminal penalty consisting of fine or imprisonment for violation of said order.

Very truly yours,
FORREST H. ANDERSON
Attorney General