

VOLUME NO. 37

OPINION NO. 19

OFFICES AND OFFICERS - County officers - absence from the state; REVISED CODES OF MONTANA, 1947 - Sections 16-2417, and 16-1001.

- HELD: 1. A county commissioner is subject to the provisions of section 16-2417, R.C.M. 1947, requiring all county officers to secure consent of the board of county commissioners before absenting themselves from the state for a period of more than five (5) days.
2. A county commissioner seeking to be absent from the state for a period in excess of five (5) days must seek approval from the other members of the board of county commissioners.

2 May 1977

Donald E. White, Esq.
Gallatin County Attorney
Gallatin County Courthouse
Bozeman, Montana 59715

Dear Mr. White:

You have requested my opinion on the following questions:

1. Is a county commissioner subject to the provisions of section 16-2417, R.C.M. 1947, requiring all county officers to secure consent of the board of county commissioners before absenting themselves from the state for a period of more than five (5) days.
2. If a county commissioner must secure consent, who has the authority to approve the absence?

Section 16-2417, R.C.M. 1947 provides in pertinent part:

A county officer must, in no case, other than herein specified, absent himself from the state for a period of more than sixty days, and for no period longer than five days without the consent from the board of county commissioners, and if he does so absent himself he forfeits his office;....

A county commissioner is a county officer under the provisions of Article II of the Constitution of the State of Montana, 1972, and chapter 16, R.C.M. 1947. A county commissioner is subject to the mandatory language of section 16-2417 and must obtain consent to leave the State of Montana for a period in excess of five days.

As noted, the statute also provides that the required consent must be obtained from the board of county commissioners. Under the provisions of the statute no other individual is authorized to approve the absence.

The county commissioners have supervisory control over all other county officers. Section 16-1001, R.C.M. 1947, provides:

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

To supervise the official conduct of all county officers and officers of all districts and other subdivisions in the county, charged with assessing, collecting, safe keeping, management or disbursement of the public revenues"

The statutes are silent regarding the specific procedure for obtaining approval to leave the state and section 16-2417 does not provide specific means by which the board of county commissioners may authorize an absence. However, it has long been held that when powers are granted to the board, and no mode of exercise is indicated, the board may in its discretion select any appropriate mode or course of procedure. Simpson v. Silver Bow County, 87 Mont. 83 at 92, 285 P.195 (1930); Arnold et al. v. Custer County et al., 83 Mont. 130 at 147, 269 P. 396 (1928).

Consequently, the members of the board of county commissioners may authorize one of their members to be absent from the state. Any reasonable and suitable procedure may be adopted. It is not necessary that the board of county commissioners given consent acting as a body and making a record of their action on the minutes of the commission.

THEREFORE, IT IS MY OPINION:

1. A county commissioner is subject to the provisions of section 16-2417, R.C.M. 1947, requiring all county officers to secure consent of the board of county commissioners before absenting themself from the state for a period of more than five (5) days.
2. A county commissioner seeking to be absent from the state for a period in excess of five (5) days must seek approval from the other members of the board of county commissioners.

Very truly yours,

MIKE GREELY
Attorney General