

VOLUME NO. 38

OPINION NO. 85

COUNTY COMMISSIONERS - Supervisory powers over county officers;

COUNTY OFFICERS AND EMPLOYEES - Supervisory powers of county commissioners over elected county officers;

MONTANA CODE ANNOTATED - Sections 7-4-2110, 7-4-2203, 7-6-2114.

- HELD: 1. The supervisory power of the county commissioners under section 7-4-2110, MCA, extends to all county executive officers enumerated in section 7-4-2203, MCA.
2. The county commissioners, in the exercise of their statutory supervisory control over county officers, may assure that the officers fulfill their statutory duties, but may not assume control
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over the manner in which those duties are performed.

30 June 1980

J. Fred Bourdeau, Esq.  
Cascade County Attorney  
Cascade County Courthouse  
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested my opinion on the following questions:

1. Does section 7-4-2110, MCA, grant to the board of county commissioners supervisory power over all public officials who hold county office?
2. What are the limitations on the exercise of the supervisory power granted in section 7-4-2110, MCA?

Your first question is answered by the statute. Section 7-4-2110, MCA, provides:

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

- (1) supervise the official conduct of all county officers...;
- (2) see that they faithfully perform their duties; [and]
- (3) direct prosecutions for delinquencies.

(Emphasis added.)

I am aware of no authority for the proposition that the phrase "all county officers" means anything other than what it says, although a plausible argument can be made that the doctrine of separation of powers would prevent the board from exercising supervision over a judicial officer such as a justice of the peace. See Board of Commissioners v. Eleventh Judicial District Court, \_\_\_ Mont. \_\_\_, 597 P.2d 728 (1979). With this possible exception, I conclude that section 7-4-2110, MCA grants supervisory power over all county executive officers enumerated in section 7-4-2203, MCA.

The Montana Supreme Court has not had occasion to speak on the extent of the supervisory power granted in section 7-4-2110, MCA. However, similar provisions have been enacted in other states, and decisions construing these provisions provide some guidance. Heller v. County Board, 71 Ill. App. 3d 31, 388 N.E.2d 881 (1979), is particularly instructive. Heller was the supervisor of assessments for Jackson County. He brought an action for injunction to prevent the county board from interfering with the operation of his office by attempting to alter his duties, establishing personnel policies, hiring employees and purchasing supplies. The trial court entered judgment for Heller, and the Court of Appeals affirmed, holding that the general supervisory powers of the board were insufficient to allow the board to take over the day-to-day operation of Heller's office. The court stated:

The county board has both executive and legislative function in its relationship to county officers. It has the power and responsibility to create salary classifications of general applicability for all county offices, elected or appointed, to the extent that it can require certain proficiencies for clerks and deputies by establishing salary schedules, may establish hours of work and other general guidelines and conditions of employment. It cannot, however, adopt organizational charts and job classifications the effect of which is to divest the supervisor of assessments of the duties and functions vested in him by law enacted by the General Assembly nor may the county board perform his duties or direct the manner in which they shall be performed.

388 N.E.2d at 885.

Heller expresses what appears to be the general rule--that the board may ensure that an officer performs his statutory duty, but may not require that that duty be performed in a particular manner, not specified by statute. Thus, in Hicks v. Orange County Board of Supervisors, 69 Cal. App. 3d 228, 138 Cal. Rptr. 101 (1977), the California Court of Appeals held that the board could not require a district attorney to perform his investigative function through the office of the sheriff-coroner. The same court held in People v. Langdon, 54 Cal. App. 3d 384, 126 Cal. Rptr. 575 (1976), that the board could not compel the county clerk to draw a jury panel from a particular geographic subdivision of the county.

The view expressed in Heller, Hicks, and Langdon is consistent with the view expressed by the Montana Supreme Court in Simpson v. Silver Bow County, 87 Mont. 83, 285 P. 195 (1930). The question in Simpson was whether the county could employ a "tax ferret" to search out and identify taxable property not found on the assessment rolls. The court stated:

It is beyond the power of the county board to enter into a contract for services, the performance of which is cast upon a different official or board, and which has the effect of relieving the other of a duty imposed by law, or of usurping the functions of such other officer.

87 Mont. at 91-92.

The court found that the board, acting as county board of equalization, was empowered to assure that all taxable property in the county was reflected on the assessment rolls, and that the county assessor's powers were therefore subordinate by statute to those of the board. The court held that the employment by the board of a tax ferret was not a usurpation of the assessor's power.

It is clear that the supervisory power of the board will not allow it to take over the day-to-day functions assigned by statute to another officer. However, the statute explicitly grants to the board the power to "see that [the officers] faithfully perform their duties." To this end, the board may examine the operations of the various officers to assure that mandatory duties are performed. See Pillsbury v. Board of Chosen Freeholders, 133 N.J. Super 526, 337 A.2d 632, 641 (1975). This power is explicitly recognized by statute in regard to some officers. See, e.g., § 7-6-2114 MCA, (county treasurer must allow board to examine books and accounts). If the board finds that the mandatory duty is not being performed, it must take appropriate steps, such as an action in the nature of mandamus, to assure that the duty is performed.

THEREFORE, IT IS MY OPINION:

1. The supervisory power of the county commissioners under section 7-4-2110, MCA, extends to all county executive officers enumerated in section 7-4-2203, MCA.

2. The county commissioners, in the exercise of their statutory supervisory control over county officers, may assure that the officers fulfill their statutory duties, but may not assume control over the manner in which those duties are performed.

Very truly yours,

MIKE GREELY  
Attorney General