

VOLUME NO. 40

OPINION NO. 77

COUNTIES - Applicability of section 2-18-501, MCA, to county officers and employees;

COUNTIES - Authority of board of county commissioners to adopt meal and lodging expense regulations;

COUNTY COMMISSIONERS - Authority to adopt meal and lodging expense regulations;

COUNTY EMPLOYEES - Applicability of section 2-18-501, MCA, to county officers and employees;

COUNTY EMPLOYEES - Authority of board of county commissioners to adopt meal and lodging expense regulations;

COUNTY OFFICERS - Applicability of section 2-18-501, MCA, to county officers and employees;

COUNTY OFFICERS - Authority of board of county commissioners to adopt meal and lodging expense regulations;
EXPENSES - Applicability of section 2-18-501, MCA, to county officers and employees;
EXPENSES - Authority of board of county commissioners to adopt meal and lodging expense regulations;
LODGING - Applicability of section 2-18-501, MCA, to county officers and employees;
LODGING - Authority of board of county commissioners to adopt meal and lodging expense regulations;
MEALS - Applicability of section 2-18-501, MCA, to county officers and employees;
MEALS - Authority of board of county commissioners to adopt meal and lodging expense regulations;
MONTANA CODE ANNOTATED - Sections 2-18-501, 2-18-503(1), 2-18-603, 7-1-2103, 7-5-2142(2), 7-5-2143(2), 7-5-2144(2), 7-5-2145, 7-6-2403, 41-5-704(3);
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 102 (1977), 38 Op. Att'y Gen. No. 16 (1979), 40 Op. Att'y Gen. No. 51 (1984).

HELD: Section 2-18-501, MCA, does not, by its own terms, govern meal and lodging expense payments to county officers or employees. Except as may otherwise be specified statutorily, a board of county commissioners with general governmental powers may adopt rules and regulations providing for payment or reimbursement of reasonable meal and lodging expenses incurred by county officers or employees in the performance of official duties.

12 October 1984

Russell R. Andrews
Teton County Attorney
Teton County Courthouse
Choteau MT 59422

Dear Mr. Andrews:

You have requested my opinion concerning a question which I have phrased as follows:

Are county officers and employees governed by section 2-18-501, MCA, with respect to meal and lodging expense payments and, if not, does a board of county commissioners with general governmental powers have the authority to establish rules and regulations concerning such expenses?

Your question must be answered with reference to the express language of section 2-18-501, MCA, the general authority of boards of county commissioners under section 7-1-2103, MCA, and specific statutory provisions governing payment of meal and lodging expenses to county officers and employees.

Section 2-18-501, MCA, regulates payment of meal and lodging expenses to "[e]very elected official, appointed members of boards, commissions, councils, department directors, and all other state employees." Although the term "state employees" is not defined, it clearly has reference only to persons employed by the State of Montana and not to those employed by a political subdivision. Had the Legislature intended to cover county officers or employees under section 2-18-501, MCA, it would have so stated. Thus, section 2-18-503(1), MCA, which deals with reimbursement of mileage expenses to employees who use their own vehicles in connection with the performance of official duties, extends to, among others, "county agents [] and all other persons who may be entitled to mileage paid from public funds," and indisputably applies to county officers and employees. Williams v. Sorenson, 106 Mont. 122, 75 P.2d 784 (1938).

Nothing in 38 Op. Att'y Gen. No. 16 (1979) indicates a construction of section 2-18-501, MCA, contrary to that stated above. The relevant issue there was whether section 2-18-603, MCA, applied to employees of a county hospital district, and I concluded that, based upon the language of the statute prior to the 1978 recodification, my opinion in 37 Op. Att'y Gen. No. 102 (1977), and the decision in Teamsters Local 45 v. Cascade County School District No. 1, 162 Mont. 227, 511 P.2d 339 (1973), full-time salaried employees of the hospital district were covered under that section. None

of the factors underlying the holding in 38 Op. Att'y Gen. No. 16 is present here. Rather, section 2-18-501, MCA, must be applied consistently with its express terms and does not extend to county officers or employees.

The fundamental grant of authority to a board of county commissioners with general governmental powers is set forth in section 7-1-2103, MCA. Section 7-1-2103(3), MCA, gives counties the power to "make such contracts ... as may be necessary to the exercise of [their] powers." Implicit in that power is the authority to employ persons for performance of otherwise authorized county functions and to compensate them for such services. See State ex rel. Blair v. Kuhr, 86 Mont. 377, 382-83, 283 P. 758, 759-60 (1930); Simpson v. Silver Bow County, 87 Mont. 83, 91-92, 285 P. 195, 198 (1930); Ransom v. Pingel, 104 Mont. 119, 122, 65 P.2d 616, 617 (1937); Kelly v. Silver Bow County, 125 Mont. 272, 274-75, 233 P.2d 1035, 1036 (1951); see generally 40 Op. Att'y Gen. No. 51 (1984). To the extent the Legislature has not otherwise specified a particular method for calculating meal and lodging expense payments, the board may adopt any rules and regulations consonant with the purpose of paying or reimbursing county officers and employees for reasonable meal and lodging expenses. The board should consult with the county attorney prior to adoption of policies for payment of meal and lodging expenses to ensure that such policies comply with any statutory limitation or requirement. See, e.g., § 41-5-704(3), MCA (requiring meal and lodging payments to county juvenile probation officers to be determined in accordance with section 2-18-501, MCA); § 7-5-2142(2), MCA (transportation expenses and per diem allowance payments to county clerk and recorders for attending general meeting of Montana association of clerk and recorders); § 7-5-2143(2), MCA (transportation expenses and per diem allowance payments to county district court clerks for attending general meeting of Montana association of clerks of court); § 7-5-2144(2), MCA (transportation expense and per diem allowance payments to county treasurers for attending general meeting of Montana association of treasurers); § 7-5-2145, MCA (general provisions governing payment of county officers and employees for attendance at conventions or meetings); § 7-6-2403, MCA (governing payment of living and travel expenses to county auditor).

THEREFORE, IT IS MY OPINION:

Section 2-18-501, MCA, does not, by its own terms, govern meal and lodging expense payments to county officers or employees. Except as may otherwise be specified statutorily, a board of county commissioners with general governmental powers may adopt rules and regulations providing for payment or reimbursement of reasonable meal and lodging expenses incurred by county officers or employees in the performance of official duties.

Very truly yours,

MIKE GREELY
Attorney General