

Chapter 203

County Governing Bodies; County Home Rule

Chapter 203

ATTY. GEN. OPINIONS: authority of county to sue state to recover title to land, 1956-58, p 75.

203.010

NOTES OF DECISIONS

1. Corporate character of county
2. Maintaining and defending suits
3. Acquiring property
4. Making contracts

1. Corporate character of county

A county is not a private corporation, but a political agent of the state created by law for governmental purposes. *Yamhill County v. Foster*, (1909) 53 Or 124, 99 P 286.

Counties act for and in behalf of the state in execution of the purposes set forth in this section, and their rights are not determined by the law applicable to private corporations. *Gearin v. Marion County*, (1924) 110 Or 390, 223 P 929.

A county has a dual character — that of a governmental agency and that of a body corporate. *West v. Coos County*, (1925) 115 Or 409, 237 P 961, 40 ALR 1362.

By a fair interpretation, this section includes authority for the county court to prevent litigation by a compromise and settlement of disputed matters of the county. *Jackson County v. Ulrich*, (1926) 118 Or 47, 244 P 535.

2. Maintaining and defending suits

The creation of a body corporate impliedly confers upon it the incidental powers of a corporation, including the power to sue and be sued so far as necessary to maintain its corporate rights and enforce its corporate duties. *Grant County v. Lake County*, (1889) 17 Or 453, 21 P 447; *State v. Baker County*, (1893) 24 Or 141, 33 P 530.

A county can maintain suit against another county in a proper case. *Grant County v. Lake County*, (1889) 17 Or 453, 461, 21 P 447.

A county can be sued without its consent in its capacity as a body corporate. Sued for attorney's fees, *West v. Coos County*, (1925) 115 Or 409, 237 P 961, 40 ALR 1362; **damage to land**, *Theiler v. Tillamook County*, (1915) 75 Or 214, 146 P 828; **unpaid state taxes**, *State v. Baker County*, (1893) 24 Or 141, 33 P 530; **debt to another county**, *Grant County v. Lake County*, (1889) 17 Or 453, 21 P 447; **sheriff's compensation**, *Crossen v. Wasco County*, (1882) 10 Or 111.

A county acting in its corporate capacity may be sued the same as a natural person, but when it acts for the state, any injury occasioned thereby must be adjusted in the mode pointed out by law. *Pruden v. Grant County*, (1885) 12 Or 308, 7 P 308.

A county cannot be sued without its consent unless the legislature lifts its immunity by general law. *Kern County Land Co. v. Lake County*, (1962) 232 Or 405, 375 P2d 817.

This section is not a general legislative waiver of the immunity of counties from suit. *Id.*

3. Acquiring property

The fact that a conveyance may have been made for a purpose other than those specified in this section does not invalidate it, since that question can be raised only by the state. *Raley v. Umatilla County*, (1887) 15 Or 172, 13 P 890, 3 Am St Rep 142; *Barnes v. Multnomah County*, (1906) 145 Fed 695.

A county has capacity to take and acquire the legal title to property for the purpose of education. *Raley v. Umatilla County*, (1887) 15 Or 172, 13 P 890, 3 Am St Rep 142.

Notes, bonds, mortgages, etc., may be taken by counties in the exercise of the powers given by this chapter, and enforced by the ordinary legal proceedings in the courts. *Alexander v. Knox*, (1879) 6 Sawy. 54, 1 Fed Cas 370.

4. Making contracts

The power to make "all necessary contracts," etc., relates to property and concerns of the county and has no application to the laying out of public roads, and a bond executed by the county court to indemnify the county against the expenses of location and damages assessed was void. *County of Douglas v. Clark*, (1887) 15 Or 3, 7, 13 P 511.

A county is not precluded from settling controversies in a way other than outlined in BC 912 (10) [ORS 203.120(10)]. *Multnomah County v. Title Guar. Co.*, (1905) 46 Or 523, 80 P 409.

ATTY. GEN. OPINIONS: Authority of county court to sell surplus aggregate and lease road equipment, 1950-52, p 294; granting easement for irrigation ditch on right of way of a county road, 1950-52, p 326; sovereign immunity, 1960-62, p 24; management of county buildings, 1962-64, p 190; constructing "boating facilities," 1964-66, p 410; collective bargaining procedure for counties, (1970) Vol 34, p 935; county authority to develop industrial sites, (1970) Vol 34, p 1000.

LAW REVIEW CITATIONS: 46 OLR 273.

203.020

NOTES OF DECISIONS

The presence in this Act of an emergency clause prevented invocation of a referendum on it. *Cameron v. Stevens*, (1927) 121 Or 538, 256 P 395.

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NOTES OF DECISIONS

The two commissioners may alone transact county business in the absence of the county judge. *Russell v. Crook County Court*, (1915) 75 Or 168, 145 P 653, 146 P 806.

The organization of irrigation districts is not county business, so the judge has jurisdiction without the attendance of the county commissioners. *Harney Valley Irr. Dist. v. Weittenhiller*, (1921) 101 Or 1, 198 P 1093.

An order, setting land aside as park area, signed only by the county judge was ineffective. *Jaquith v. Hartley*, (1966) 243 Or 27, 411 P2d 274.

FURTHER CITATIONS: State ex rel. Wernmark v. Hopkins, (1958) 213 Or 669, 326 P2d 121, 327 P2d 784.

ATTY. GEN. OPINIONS: Whether the acts of the county court in assessing taxes are judicial or administrative, 1920-22, p 45; appointment of county commissioners by the county court, 1926-28, p 612; authority of the county officers to execute a bond, 1926-28, p 621; whether the appointment of a county officer by the court is county business, 1938-40, p 600; number of votes required for county court to transact business, 1966-68, p 29.

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NOTES OF DECISIONS

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2. Public buildings
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 - (2) Fees and claims
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1. In general

When the county court exercises the powers pertaining to county commissioners it is a court of inferior or limited jurisdiction and can only exercise such powers as are expressly conferred or necessarily implied. Crossen v. Wasco County (1882) 10 Or 111; Bank of Idaho v. Malheur County (1896) 30 Or 420, 45 P 781, 35 LRA 141; Frankl v. Bailey, (1897) 31 Or 285, 50 P 186; Stout v. Yamhill County, (1897) 31 Or 314, 51 P 442.

But one court is provided for; the judge and the commissioners do not constitute a separate tribunal from the judge sitting alone. State v. MacElrath, (1907) 49 Or 294, 296, 89 P 803; Harney Valley Irr. Dist. v. Weittenhiller, (1921) 101 Or 1, 198 P 1093.

Parol evidence is admissible to supplement the records of the county court as to proceedings of such court when sitting for the transaction of county business. Stout v. Yamhill County, (1897) 31 Or 314, 51 P 442.

The constant factor of the county court is the county judge; the county commissioners are in addition and only for the transaction of county business. State v. Maddock, (1911) 58 Or 542, 115 P 426.

The word "provide" is term of comprehensive significance and implies the power of the county court to raise a fund for the purpose named by taxation. Obenchain v. Daggett, (1913) 68 Or 374, 137 P 212.

An order for an election to determine the creation of a new county out of an existing one is valid whether the court is sitting as a court or as a tribunal to transact county business. Russell v. Crook County Court, (1915) 75 Or 168, 145 P 653, 146 P 806.

2. Public buildings

The county court may exercise its discretion as to when to build or repair a public building, or whether to do either. Municipal Sec. Co. v. Baker County, (1898) 33 Or 338, 54 P 174.

A special fund for the erection of a courthouse may be created by the county court, though the general fund of the county is in debt in excess of the constitutional limit. Obenchain v. Daggett, (1913) 68 Or 374, 137 P 212.

A contract for a courthouse is within the authority of

the county court, subject to the constitutional limitation as to indebtedness. Dougan Co. v. Klamath County, (1921) 99 Or 436, 193 P 645.

The building of a new courthouse is not an ordinary county expense within the meaning of OC 69-602 [ORS 310.020], providing for a tax levy to defray county expenses. Umatilla County v. Davis, (1939) 161 Or 127, 85 P2d 379, 88 P2d 314.

3. Roads and highways

Every essential jurisdictional fact must appear by the record to support the order of a county court as to roads, but once jurisdiction is obtained the court is favored by the same intendments as to regularity of proceedings as are courts of general jurisdiction. Grady v. Dundon, (1897) 30 Or 333, 47 P 915; Sime v. Spencer, (1897) 30 Or 340, 47 P 919.

The county is the proper party defendant in a proceeding to review the action of its county court as to a highway. Fisher v. Union County, (1903) 43 Or 223, 72 P 797.

The road supervisor appointed by the county court may keep the roads in repair without a specific order of the court, and the county is liable therefor. Ridings v. Marion County, (1907) 50 Or 30, 91 P 22.

Where later legislation does not in terms attempt to infringe upon the authority of the county courts, its provisions are merely cumulative, and it is within the discretion of the county court to make a levy provided for. Kime v. Thompson, (1911) 60 Or 183, 118 P 174.

The affirmative authority of the county court as to roads was not changed by the 1910 amendment to Ore. Const. Art. XI, §10, limiting amount of debts. Andrews v. Neil, (1912) 61 Or 471, 120 P 383, 123 P 32.

Money raised by a tax for general county purposes may be used upon county roads, as a statute authorizing special levies for roads is not an exclusive method. Roney v. Lane County, (1916) 81 Or 372, 159 P 73.

4. Bridges

A county was liable at common law for any injury resulting from its act or omission in the construction or maintenance of a bridge on a public highway. Eastman v. County of Clackamas, (1887) 12 Sawy. 613, 32 Fed 24.

The county court acts as an agent of the county, not as a court, when it acts upon the expediency and manner of repairing bridges in public highways. Stout v. Yamhill County, (1897) 31 Or 314, 319, 51 P 442.

Under the Medford charter of 1901, the county court retained the duty of repairing bridges within the limits of the municipality. Bowers v. Neil, (1913) 64 Or 104, 128 P 433.

A provision of the charter of the City of Sheridan to collect road taxes did not relieve the county of its duty to maintain a certain bridge across the Yamhill and its approaches. Yocom v. Sheridan, (1913) 68 Or 232, 137 P 222.

A landowner has a cause of action for damages to his land by diversion and overflow of a stream caused by the defendant county building a bridge and culvert. Theiler v. Tillamook County, (1915) 75 Or 214, 146 P 828.

5. Ferries

A grant of a ferry license is exclusive and the county court cannot establish another ferry at the same place. Montgomery v. Multnomah Ry., (1884) 11 Or 344, 3 P 435; Hackett v. Wilson, (1885) 12 Or 25, 32, 6 P 652.

The grant of a ferry right to and from a place where there is no highway, or in which the public has no rights, would be void and inoperative. Montgomery v. Multnomah Ry., (1884) 11 Or 344, 3 P 435.

The record of the county court granting a ferry license must show affirmatively a compliance with the statute

regulating ferries. *Dean v. Wash. Nav. Co.*, (1911) 59 Or 91, 115 P 284.

6. Revenue and taxation

The employment of assistance in collecting delinquent taxes which cannot otherwise be collected is within the power of the court. *State v. Hall*, (1900) 37 Or 479, 481, 63 P 13.

In the exercise of its taxing power the county court is one of special and limited jurisdiction. *Obenchain v. Daggett*, (1913) 68 Or 374, 137 P 212.

An expenditure incurred by the county court in cruising timber land for the purpose of assessment for taxation, which could not be made equitably by the assessor without assistance, is not a voluntary indebtedness within the prohibition of the constitution. *Wingate v. Clatsop County*, (1914) 71 Or 94, 142 P 561.

City charter sections exempting the city from road taxes levied by the county court are inapplicable to general taxes raised under this section, although they are used for road purposes. *Roney v. Lane County*, (1916) 81 Or 372, 159 P 73.

The county was not liable to a city for a portion of tax lawfully levied under this section. *Pendleton v. Umatilla County*, (1926) 117 Or 140, 142, 241 P 979.

Correction of errors made by the assessor in the valuation of property was not within the jurisdiction of the county court under the statutes. *Shumway v. County of Baker*, (1870) 3 Or 247.

7. Care of poor

The county courts are vested with discretion as to whether they will grant relief to poor persons in a particular case; no mandatory duty is imposed by statute. *Multnomah County v. Luhn*, (1947) 180 Or 528, 178 P2d 159.

Statute requiring county to levy tax for public assistance fund was in accord with the provision "together with the rate required by law for any other purpose." *State v. Malheur County*, (1949) 185 Or 392, 203 P2d 305.

8. General management of county affairs

(1) **Scope.** When the court acts as fiscal agent of the county it acts precisely as would the agent of a private corporation, and for that purpose it does not constitute a court in the proper sense. *Crossen v. Wasco County*, (1882) 10 Or 111; *Frankl v. Bailey*, (1897) 31 Or 285, 50 P 186.

The ordinary rules applicable between principal and agent apply to the commissioners when acting as fiscal agents of the county. *Multnomah County v. Title Guar. Co.*, (1905) 46 Or 523, 80 P 409.

The county court may adopt such means as in its judgment shall be expedient in assisting the county officers properly to discharge the duties of their offices. *Wingate v. Clatsop County*, (1914) 71 Or 94, 142 P 561.

"County business" within the constitution means all business pertaining to the county as a corporate entity, and the legislature may neither limit nor extend the operation of the constitution. *Russell v. Crook County Court*, (1915) 75 Or 168, 145 P 653, 146 P 806.

It is as an inferior tribunal that the county court sits for the transaction of county business by the commissioners and the judge. *Stadelman v. Miner*, (1917) 83 Or 348, 392, 155 P 708, 163 P 585, 983.

(2) **Fees and claims.** Where the law prescribes fees to be paid by the county, the court must pay them; there is not jurisdiction in the court to render a "decision." *Crossen v. Wasco County*, (1882) 10 Or 111.

The judicial sense "to hear and determine" is not implied as a power of the court in auditing and allowing claims. *Id.*

A judicial jurisdiction will not be implied as it is unneces-

sary when the court is acting as the financial agent of the county. *Id.*

Because they deem it in the interest of public justice is no reason for the county court to pay a bill. *Id.*

The court cannot pay off or take assignments of claims against creditors of the county so as to succeed to the rights of such creditors. *Bank of Idaho v. Malheur County*, (1897) 30 Or 420, 45 P 781, 35 LRA 141.

A county court must audit and allow a claim for services performed when the fees are regulated by law. *Wallowa County v. Oakes*, (1905) 46 Or 33, 35, 78 P 892.

The right to pay claims rests, not on the judgment of the county court, a court of inferior jurisdiction, but on the law. *Mont v. Welsh*, (1926) 118 Or 568, 571, 247 P 815.

(3) **Contracts.** A county court may contract for making books containing lists of present owners of all property in the county. *Burnett v. Markley*, (1893) 23 Or 436, 31 P 1050.

A contract interfering with the duties of county officials is void. *Burness v. Multnomah County* (1900) 37 Or 460, 60 P 1005.

The district attorney was unauthorized to contract for services in procuring evidence under the former prohibition Act, as the contract power is in the county court. *Irwin v. Klamath County*, (1919) 93 Or 538, 183 P 780.

Contracting with an attorney in attempting to secure from the United States a sum due the county is within the proprietary capacity of the county. *West v. Coos County*, (1925) 115 Or 409, 237 P 961, 40 ALR 1362.

The county court must act as a body; hence a contract signed and assented to by the county judge alone, unless previously authorized or subsequently ratified or acquiesced in by the county court acting as a body, would be invalid. *Foster v. Lake County* (1930) 132 Or 374, 284 P 830.

(4) **Warrants.** County warrants issued by the court are only prima facie evidence that the municipality is indebted to the holder thereof and are open to all the defenses available as between the original parties. *Frankl v. Bailey*, (1897) 31 Or 285, 50 P 186.

Warrants issued by the county court are subject to recall by a subsequent order issued by such court prohibiting their payment. *Id.*

9. Release or compromise of debts

Warrants issued by the court in compromise of claims against the county are not judicial decisions upon the validity of the claims. *Frankl v. Bailey*, (1897) 31 Or 285, 50 P 186.

A controversy over tax certificates held by a county, and the rights of the respective parties thereunder may be adjusted and settled by the board of county commissioners. *Multnomah County v. Title Guar. Co.*, (1905) 46 Or 523, 80 P 409.

A compromise settlement of taxes, when not fraudulent, cannot be rescinded by the board of county commissioners after the decree adjudging the certificates valid has become final, even though the amount of taxes was stated incorrectly or taxes not referred to in the offer to compromise were included. *Id.*

The board is not precluded from settling controversies arising in other ways than authorized in subsection (10). *Id.*

A tax controversy as to an assessment may be settled by the county court where the validity of the assessment is gravely in doubt. *Jackson County v. Ulrich*, (1926) 118 Or 47, 244 P 535.

Prevention of litigation by a compromise and settlement of the disputed county matter is within the authority of the county court. *Id.*

10. Actions

An ordinary action at law may be brought to recover the amount claimed under a contract with the county which

has been rejected in part by the county court. *Coos Bay Times Pub. Co. v. Coos County*, (1916) 81 Or 626, 160 P 532.

The court may discontinue a suit for the benefit of a county in the absence of fraud. *Allen v. Craig*, (1921) 102 Or 254, 201 P 1079.

FURTHER CITATIONS: *Templeton v. Linn County*, (1892) 22 Or 313, 321, 29 P 795, 15 LRA 730; *State v. Holman*, (1914) 68 Or 546, 137 P 771; *Feehely v. Rogers*, (1938) 159 Or 361, 76 P2d 287, 80 P2d 717.

ATTY. GEN. OPINIONS: Supplying and furnishing of office to district attorney, 1920-22, pp 7, 326; discretion as to amount to expend for office equipment for justice of peace, 1920-22, p 47; employment of person to attend State Highway Commission meetings, 1920-22, p 141; nonremittance of delinquent taxes, interest and penalties properly assessed against a church parsonage, 1920-22, p 425; inclusion of an item for roads and bridge purposes under another section and another item for bridges to be provided by taxes levied under this section in budget, 1922-24, p 88; compromising taxes by rebating penalties and interest, 1922-24, p 108, 1924-26, p 37; compromising and settling disputed claim of county for taxes, 1922-24, p 452; payment of expenses of district attorney, 1922-24, p 507; ordering cancellation of void tax and certificate representing same, 1924-26, p 575; executing surety bond on behalf of county covering a lost warrant, 1926-28, p 621; compromising amount of taxes due upon land acquired by World War Veterans' State Aid Commission by rebating interest and penalties, 1928-30, p 18; paying grange for buildings erected on county's property, 1928-30, p 214; correcting assessment against a brick furnace erected on a mining property, 1928-30, p 546; custodian of county courthouse, 1932-34, p 187.

Limiting expense account of food for prisoners, 1930-32, p 172; accepting deeds to property upon which taxes are delinquent, in lieu of pursuing the statutory provisions for foreclosing certificates of delinquency; 1930-32, p 338; expenditure for litigation of a case of the state of Washington against the state of Oregon pending in the United States Supreme Court, 1930-32, p 376; power of county budget committee to include in budget items for incidental expenses incurred by district attorney, 1930-32, p 431.

Canceling taxes levied illegally by a road district, 1934-36, p 57; entering into an agreement with owners of burned-over timber lands relative to taxes assessed thereon, 1934-36, p 100; discretion as to cancellation of taxes on lands conveyed to the United States under the Taylor Grazing Act, 1934-36, p 215; authority of county clerk as to auditing or allowing claims under the direction of the county court, 1934-36, p 277; leasing of school building to the county for use as a courthouse, 1934-36, p 315; securing office space and paying rent thereon for district attorney's office, 1934-36, p 592; presentation of salaries and travel expenses of juvenile officers for audit and payment, 1934-36, p 672; membership of an association of counties and expenditure of county funds therefor, 1934-36, p 770.

Purchasing of supplies for use of the circuit court, and the audit and payment of the claim therefor, 1936-38, p 286; applying to appropriate water for the purpose of increasing the flow of a creek, 1936-38, p 303; expending sums of money equal to delinquent taxes charged against certain property about to be conveyed to the United States government for use of forestry department, in order to acquire a right of way of such lands, 1936-38, p 303; requiring county officials to purchase supplies from designated persons, 1936-38, p 633; changing, correcting or lowering assessed valuation of corporate property, 1936-38, p 671.

Acceptance or rejection of proposed extension of delinquent taxes after owner of property has filed petition in bankruptcy, 1938-40, p 633; money for installation and

maintenance of a tide gate and dam and to contribute to the construction of dikes by a diking district, 1940-42, p 239; safe-keeping of records in time of emergency, 1940-42, p 552; discharging a judgment lien for costs in a criminal case otherwise than by payment, 1942-44, p 376; financing of program to control eradication of Mormon crickets for which counties may use emergency fund, 1942-44, p 398.

Employing private counsel to defend district attorney and sheriff in an action for false arrest, 1946-48, p 131; refunding moneys paid to county under mistake of fact, 1948-50, p 89; purchasing a hospital, 1948-50, p 102; transfer of county funds in excess of constitutional limitation, 1948-50, p 241; authority of county court to acknowledge a debt for services rendered, 1948-50, p 441; power of county officials to give a quitclaim deed to the owner of land located in another county, 1950-52, p 57; under what conditions the county court can appropriate money for recreational purposes, 1950-52, p 102; county auditor as purchasing agent of Clackamas County, 1950-52, p 112; transfer of funds from emergency fund to civil defense fund, 1950-52, p 159; appointment of county assessor as special tax consultant to sheriff, 1950-52, p 204; authority of county court to sell surplus aggregate and lease road equipment, 1950-52, p 294; operation of rock quarry or gravel pits in competition with private enterprise, 1950-52, p 294; granting easement for irrigation ditch on the right of way of a county road, 1950-52, p 326; paying salary of district judge pro tem, 1950-52, p 328; authority to number and renumber houses outside corporate limits of a city, 1952-54, p 5; what county offices must be located at the county seat, provision of funds for temporary quarters when county seat has been changed, 1952-54, p 101.

Use of funds from levy for architect fees and furniture, 1954-56, p 44; submitting items to voters separately, 1954-56, p 70; income and expenditures from operation of county interstate toll bridge, 1954-56, p 125; payment of a court reporter who is aiding in an investigation by the district attorney, 1952-54, p 165; county acquiring community center, 1956-58, p 65; delegation of authority to make purchases, 1956-58, p 127; authorization of the expenditure of funds from county common fund, 1956-58, p 133; approval of order of circuit court directing payment of bailiff's salary, 1958-60, p 7; reimbursement for electors and freeholders serving on county budget committee, 1958-60, p 36; hiring lawyer to prepare and present legislation, 1958-60, p 174; proceeds from sale of county forest timber, 1958-60, p 401; authority to draw county warrants, 1958-60, p 320; budgeting and accounting for funds arising from agreement with Federal Government, 1960-62, p 125; limitation on county levy to erect buildings on county fairgrounds, 1960-62, p 189; obtaining funds for hospital care of indigents, 1960-62, p 219; compensation of district attorney, 1960-62, p 335; limitations on authority granted in subsection (14), 1962-64, p 7; constructing a county stadium, 1962-64, p 14; return of jury fees, 1962-64, p 29; construction of a convention center, 1962-64, p 190; making improvements on tax foreclosed land, 1962-64, p 199; approval of salary increase for employe, transfer of employe and salary adjustment, 1962-64, p 264; authority to expend liquor revenues for relief, 1962-64, p 302; court orders requiring juveniles to work in parks, 1962-64, p 423; county authority to expend public funds for employe retirement plans, 1964-66, p 148; authority for sick leave benefits of county elected officials, 1964-66, p 256; construing "boating facilities," 1964-66, p 410; authority of county to contract to provide police protection to a city, 1966-68, p 34; authority for tri-county stadium, 1966-68, p 47; authority of county assessor to change salaries for employes in his office, 1966-68, p 138; county employe serving subpenas in criminal cases, 1966-68, p 294.

Contribution of county funds to county historical society, (1968) Vol 34, p 309; contribution of county funds to county fair association, (1968) Vol 34, p 309; controlling payment

of claims against the county, (1969) Vol 34, p 493; computer service contract for preparation and payment of payroll, (1969) Vol 34, p 746; juvenile court authority to require unmarked county cars, (1970) Vol 34, p 977; use of county funds for city park, (1970) Vol 34, p 1005; use of highway fund grants to support private museum, (1970) Vol 34, p 1108; authority of nonhome rule county governing body to establish and maintain public defender's office, (1970) Vol 34, p 1157; "employer" in collective bargaining by sheriff department employes, (1970) Vol 35, p 181; authority to erect county buildings, (1971) Vol 35, p 500.

LAW REVIEW CITATIONS: 46 OLR 251, 262, 266; 4 WLJ 475.

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ATTY. GEN. OPINIONS: District Attorney as legal adviser for county service districts, 1966-68, p 432; county's rights and duties when zoning district is dissolved, (1968) Vol 34, p 44; general duty of district attorneys, (1971) Vol 35, p 448.

LAW REVIEW CITATIONS: 46 OLR 281.

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ATTY. GEN. OPINIONS: Requirement of public bid, 1960-62, p 56; county authority to expend public funds for employe retirement plans, 1964-66, p 148; payment of premiums to union-employer benefit trust fund, 1966-68, p 521; "employer" in collective bargaining by sheriff department employes, (1970) Vol 35, p 181.

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CASE CITATIONS: Thompson v. Gen. Ins. Co., (1961) 226 Or 205, 359 P2d 1097.

ATTY. GEN. OPINIONS: "Employer" in collective bargaining by sheriff department employes, (1970) Vol 35, p 181.

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ATTY. GEN. OPINIONS: Expenditure of funds for advertising, 1938-40, p 710; budgeting and levying taxes for Inland Empire Waterways Association, 1938-40, p 522; participation in Space Age Industrial Park Development Association, 1960-62, p 314, 1962-64, p 20.

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ATTY. GEN. OPINIONS: Appearance at tax hearing by nonlawyer representative, (1968) Vol 34, p 91.

203.140

LAW REVIEW CITATIONS: 4 WLJ 475.

203.170

NOTES OF DECISIONS

The persons designated by statute to compose a county court do not constitute such court for the transaction of county business except when they are in session at the time and place properly and legally determined. *State v. Rhodes*, (1906) 48 Or 133, 85 P 332.

A report of viewers was not filed prior to the next regular term as required by statute. *McMillan v. Mason*, (1914) 70 Or 133, 140 P 446.

The commissioners of the county court, while sitting with the county judge, are holding court and are as much a part

of the court as the judge. *Russell v. Crook County Court*, (1915) 75 Or 168, 145 P 653, 146 P 806.

FURTHER CITATIONS: *Stadelman v. Miner*, (1917) 83 Or 348, 155 P 708, 163 P 585; *Colombo v. Hewitt*, (1960) 221 Or 121, 350 P2d 893.

ATTY. GEN. OPINIONS: Authority of the county court to appoint a commissioner, 1926-28, p 613; the remedy of mandamus to compel a county court, 1932-34, p 103; whether a county court has to observe office hours, 1940-42, p 203; whether a county court may abolish a justice court district under its jurisdiction, 1940-42, p 475; construing "next regular term" of county court for reading report of county road viewers, 1964-66, p 428.

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NOTES OF DECISIONS

The county court when sitting for the transaction of county business may consist of any two of the persons authorized to sit in such court, and an adjournment from day to day may be ordered by any two of them. *Russell v. Crook County Court*, (1915) 75 Or 168, 145 P 653, 146 P 806.

ATTY. GEN. OPINIONS: Number of votes required for county court to transact business, 1966-68, p 29.

203.200

NOTES OF DECISIONS

Decisions involving county business are reviewable only on writ of review. *Mountain v. Multnomah County*, (1880) 8 Or 470; *Crossen v. Wasco County*, (1882) 10 Or 111; *McCall v. Marion County* (1903) 43 Or 536, 73 P 1030, 75 P 140; *Palmer Lbr. Co. v. Wallowa County*, (1911) 60 Or 342, 118 P 1013.

A decision upon application for redress in respect to an alleged erroneous assessment is reviewable upon writ of review. *Rhea v. Umatilla County*, (1868) 2 Or 298.

A writ of review will not lie to bring up the record of proceedings of a county court in a civil action after the right of appeal has gone by through the lapse of more than 30 days since the rendition of the judgment. *Brobach v. Huff*, (1884) 11 Or 395, 4 P 1130. *Contra*, *Evans v. Christian*, (1873) 4 Or 375.

The court, in auditing an account for services where the amount of compensation is not fixed by law, is doing "county business." *Pruden v. Grant County* (1885) 12 Or 308, 310, 7 P 308.

In locating and establishing highways, a county court is transacting county business, and its proceedings can be reviewed only by a writ of review. *Leader v. Multnomah County*, (1892) 23 Or 213, 31 P 481.

Errors of a county court in apportioning or refusing to apportion the road fund of the county may be corrected by writ of review. *Oregon City v. Clackamas County*, (1898) 32 Or 491, 495, 52 P 310.

Questions as to disputed claims against a county after presentation and disallowance are reviewable on writ of review. *Berridge v. Marion County* (1916) 81 Or 391, 159 P 628.

A writ of review is the proper remedy to review the action of a county court vacating a county road. *Holmes v. Graham*, (1938) 159 Or 466, 80 P2d 870.

This section was not applicable when the issue was whether the county court had made a decision in the form provided by statute. *Jaquith v. Hartley*, (1966) 243 Or 27, 411 P2d 274.

203.230

ATTY. GEN. OPINIONS: Term of county judge having no judicial functions, 1964-66, p 327; numbering position during changeover from county judge to a third commissioner in Polk County, 1964-66, p 349.

LAW REVIEW CITATIONS: 46 OLR 281.

203.710 to 203.810**NOTES OF DECISIONS**

Whether state legislation is binding upon a home-rule county depends on whether the subject is one of paramount statewide concern. Department of Rev. v. Multnomah County, (1970) 4 OTR 133.

Oregon Laws 1969, ch. 45, §8 prohibiting public assistance levy for three years was a matter of statewide concern. Id.

ATTY. GEN. OPINIONS: Alternative methods of placing charter on ballot, 1960-62, p 407; authority of county to make library board advisory, 1964-66, p 287; proper election for submission of county charter amendment or repeal, 1966-68, p 33; accounting for road funds, (1970) Vol 35, p 1.

LAW REVIEW CITATIONS: 46 OLR 251-285; 4 WLJ 467, 476.

203.710

ATTY. GEN. OPINIONS: Creation of new offices under home rule, 1960-62, p 388; status of Mid-Columbia Planning Council under federal Social Security Act, 1964-66, p 207.

203.720

CASE CITATIONS: Civin v. Frye, (1963) 236 Or 233, 388 P2d 112.

ATTY. GEN. OPINIONS: Bonding under county home rule, 1958-60, p 183; election on adoption of county charter, 1958-60, p 390; authority under county home rule to create

county offices, 1960-62, p 388; alternative methods of placing charter on ballot, 1960-62, p 407.

203.730

ATTY. GEN. OPINIONS: Alternative methods of placing charter on ballot, 1960-62, p 407; representative-at-large vote in committee selection, 1964-66, p 49.

203.740

ATTY. GEN. OPINIONS: Representative-at-large vote in committee selection, 1964-66, p 49.

203.760

ATTY. GEN. OPINIONS: Election on adoption of county charter, 1958-60, p 390; alternative methods of placing charter on ballot, 1960-62, p 407.

203.780**NOTES OF DECISIONS**

Signatures on petitions to initiate a county legislative election must be submitted in ample time for the county clerk to verify the signatures before the constitutional and statutory deadline. Stuart v. Weldon, (1966) 245 Or 203, 421 P2d 367.

FURTHER CITATIONS: Civin v. Frye, (1963) 236 Or 233, 388 P2d 112.

ATTY. GEN. OPINIONS: Election on adoption of county charter, 1958-60, p 390; alternative methods of placing charter on ballot, 1960-62, p 407; procedure to repeal charter, 1966-68, p 242; legality of petition circulated which is different from preliminary copy filed, 1966-68, p 572.

203.810

ATTY. GEN. OPINIONS: Validity of county charter provisions regarding judicial duties, 1960-62, p 403; authority of home rule counties to enact ordinances regulating pinball machines, application of ordinances within cities, 1966-68, p 174.