

circuit or superior court of the state in connection with any litigation arising from the primary or general election at which they were cast, and at the end of six months "he shall destroy them". Under this section it will be noted that the method of destruction is not designated. Therefore, it is my opinion that after the clerk has held these ballots for a period of six months, he may destroy them by bailing them and selling them as waste paper.

Another section of the statute makes it the duty of the county clerk to preserve the ballots used in any general election, concerning which any contest has arisen, so long as said contest remains undecided. Therefore, it is my opinion that the clerk would have no right to destroy any ballots in his possession in the event an undecided contest exists relative to an election in his county. With this exception, however, it is my opinion that all ballots and all other unused election supplies which may be disposed of for scrap paper may be thus destroyed by the county clerk or the county board of election commissioners.

STATE BOARD OF ACCOUNTS: Fire Fighting Apparatus for counties—whether same can be purchased by county commissioners if an appropriation is made by the county council.

January 15, 1942.

Mr. Otto N. Jensen,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Mr. Jensen:

I have before me your request for an opinion in answer to the following questions:

"1. Would it be legal for the county council to appropriate funds, and for the board of county commissioners to purchase fire fighting apparatus to protect all property in the county?

"2. If your answer to the first question is in the affirmative, would it be legal for the county to contract with a city in such county to house, maintain and operate such fire fighting apparatus?"

In the case of Myers v. Gibson, 147 Ind. 458, at page 454, the court held that the boards of commissioners of counties have no power except such as are expressly or impliedly given by statute and that their powers are limited and must be exercised in the manner provided by statute.

Following the above case, in the case of State ex rel. v. Coldthait, 172 Ind. 210, at page 216, the court said, in referring to the powers of county commissioners :

“* * * While they have extensive administrative functions with respect to which they may have implied and discretionary powers, they have no such powers in their governmental contractual relations. They are limited governmental agents, and must find their powers in their governmental contractual relations and capacity, by virtue of some statute. Counties are local subdivisions of the State, created by the sovereign power of the State, of its own sovereign will, for governmental purposes, without the particular solicitation, consent or concurrence of the inhabitants of the county, and their powers are limited, and must be exercised in the manner provided by statute. * * *”

Applying these principles to the general powers of county commissioners as provided in the Pocket Supplement of June, 1941, Burns' Indiana Statutes Annotated, Section 26-620, we fail absolutely to find any provision in the statute which would authorize the board to purchase fire fighting apparatus to be used for the public generally, and we find no other statute giving such authority. They are, by Section 26-620, *supra*, among other things, required :

“* * * to take care of and preserve such property
* * *”

meaning the property of the county; that is, the public property of the county, and it may be that they would be authorized to purchase fire fighting apparatus for such limited purposes, but there is, in my judgment, nothing in the statute which would authorize them to buy fire fighting apparatus for the protection of private property within the county.

Your first question is, therefore, answered in the negative.

The first question having been answered in the negative, the second question requires no answer.