

**Boards of County Commissioners, Powers of. Court House,
Purchase of Site for.**

Where the electors of a county have authorized and empowered the county commissioners to erect a court house, such commissioners have the implied power to acquire a suitable site therefor.

Helena, Montana, January 29, 1909.

Hon. Thomas J. Walker, County Attorney, Butte, Montana.

Dear Sir:

I am in receipt of your letter of the 27th inst., submitting the proposition:

Where the electors of a county have authorized and empowered the county commissioners to erect a county court house and to issue and sell bonds therefor, does such power authorize the purchase of a suitable site for such court house?

Subdivisions 7 and 9 of Section 2894, Revised Codes, confer upon the boards of county commissioners the authority "to provide suitable rooms for county purposes," and "to cause to be erected and furnished a court house, jail," etc. And subdivision 8, of said section, prescribes the method of procedure to be observed in the purchase of real property.

The only provision of the constitution involved in the proposition is Section 5, of Article XIII., which prohibits the county from incurring any indebtedness or liability to an amount exceeding \$10,000.00 without the approval of a majority of the electors.

Courts give to this provision of the constitution a very strict construction, as will appear from an investigation of the following decisions:

Hefferlin v. Chambers, et al. 16 Mont., 349;

Hoffman v. Commissioners, 18 Mont, 224;

Hotchkiss v. Marian, et al. 12 Mont. 218;

Tinckle v. Griffin, et al. 26 Mont., 426;

Yegen v. Commrs. 85 Pac. (Mont.) 740;

Shaw v. Young, et al. 66 Pac., (Wash.) 64.

In the Hefferlin case, supra, the court held that the purchase of a court house site, and the erection of a court house thereon, was a single purpose. And in the Yegen case, supra, in discussing the power of the county commissioners to acquire a site for a detention hospital, the court said:

"While these sections do not in express terms empower the board of commissioners to acquire sites for the erection of detention hospitals for their respective counties, they do confer the power to build them, and by the well settled rule that every power necessary to execute the power expressly granted is necessarily implied, the power to acquire by purchase or otherwise suitable sites for these hospitals is necessarily implied; for it would be idle to say that the boards have the power to erect suitable buildings for an express purpose, and then say that they have no power to proceed because there is no express grant of power to purchase suitable sites for them."

Where, therefore, the Board of County Commissioners is authorized and empowered to erect a court house, the power to purchase, or otherwise acquire, a suitable site therefore is necessarily implied.

Whether the necessity exists for the purchase of a court house site, or whether the price agreed to be paid therefor is reasonable, are questions of fact which we cannot pass upon.

Very truly yours,

ALBERT J. GALEN,

Attorney General.