

**Broker's Commission—Payment of by County.**

A brokerage charge in connection with the payment of interest upon county bonds is not a proper charge against the county, and the county has no authority to pay the same.

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County Attorney,  
Broadus, Montana.

My dear Mr. Burkey:

You have inquired whether there is authority of law for payment by your county of a brokerage charge presented by Kountze Brothers, of New York, at whose banking house the coupons of certain bonds of your county are payable, which charge was made when the interest was forwarded by you to said banking house for the purpose of paying the interest coupons then due.

Sections 2905, 2906, 2907, and 2908 of the Revised Codes of 1907, as amended by Chapter 32 of the Laws of 1915, authorize the Board of County Commissioners to issue and sell county coupon bonds for the purposes therein provided. Section 2912 makes provision for the levying of taxes in "a sum sufficient to pay the interest on all bonds issued," etc., and "to provide for the redemption of the bonds as the same become due" to be "used for no other purpose than the payment of such bonds and interest accruing thereon." Section 2913 provides that the County Treasurer shall pay the bonds and interest as they become due.

It is to be noted that the taxes collected for the redemption of the bonds and payment of interest can be used for no other purpose. Furthermore, there is no provision elsewhere in the statutes specifically authorizing counties to pay brokerage charges in connection with interest payments on county bonds.

It has long been established in the law of Montana that County Commissioners and counties must look to statutory authority specifically conferred before they have authority to act.

In *Edwards v. Lewis and Clark County*, 53 Mont. 359, 366, the principle was stated in the following language:

"The statutes constitute the charter of a county's power, and to them it must look for the evidence of any authority sought to be exercised."

See also:

*Ainsworth v. McKay*, 55 Mont. 270, 273;

*State ex rel. Lambers v. Coad*, 23 Mont. 131, 137.

From your statement the coupons in question were, by the terms of the proceedings for the issuance of the bonds and by the bonds themselves, made payable at the office of the County Treasurer or at the banking house of Kountze Brothers, New York City, at the option of the holder. This does not entail any obligation upon the county to pay a brokerage charge by virtue of the option given. If, in the exercise of such option, a brokerage charge is made, that is a question between the holder of the coupons and the brokerage company and one to which the county is not a party.

It is, therefore, my opinion that a brokerage charge in connection with the payment of interest upon the bonds of the county is not a proper charge against the county, and that the county has no authority to pay the same.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.