

Highways—Change of Location of Federal Aid Projects.

The Board of County Commissioners and the State Highway Commission have no power to change a highway for which bonds have been voted by the electors of a county without the consent of such electors, whenever such change amounts to more than a local alteration for the betterment or shortening of the proposed highway.

John N. Edy, Esq.,

Chief Engineer State Highway Commission,
Helena, Montana.

My dear Mr. Edy:

You have requested my opinion on the following question:

“Can the Board of County Commissioners, cooperating with the State Highway Commission, spend any part of the proceeds of a bond issue upon a section of highway differing from that designated upon the map and ballots by which the issue was authorized by the voters?”

The situation, as I understand it from your letter and the documents submitted therewith, is that the voters of Gallatin County voted a bond issue to build roads, among which is a section of road along the west side of Gallatin River. It now develops that this piece of road will better serve the taxpayers if built on the east side of said river. The question therefore resolves itself into this: Can the proceeds of bonds voted for one road be diverted to the construction of another road?

As a general rule, it may be stated that money voted for one purpose cannot be used for another, although such a wrongful diversion of the funds would not in itself have any effect upon the validity of the bonds.

19 R. C. L. 311;
Anderson v. Beall, 113 U. S. 227;
Cairo v. Zane, 149 U. S. 122.

In this case, the map on which the campaign for the bonds was conducted, the election notice and the ballots used in the election, all specifically describe this particular piece of road as one proposed to be built with the proceeds of the bonds. Hence, it is clear that the voters, in authorizing the bond issue, had that particular piece of work in mind. This can almost be said to create a contractual relation between the taxpayers and the county to build said road in the location specified. If the proposed change can be said to be a mere alteration, then there is no question of power to make it, as the Commissioners plainly have that power; but such a wide deviation as is here proposed seems to be stretching the power of alteration to a dangerous tension, and it is my opinion that the courts would sustain the right of the taxpayer to an injunction for the purpose of preventing the change.

It has been held that the laying out of a road must follow in general the course named in the petition asking for it;

Washington Ice Co. v. Lay, 103 Ind. 48, 2 N. E. 222;
Cushing v. Wells, 102 Me. 157, 66 Atl. 719;

and is void if varying therefrom.

Halverson v. Bell, 39 Minn. 240, 39 N. W. 324;
Norton v. Truitt, 37 Atl. 130.

In voting bonds based upon maps showing the proposed highway to be improved, the taxpayers have so expressed their choice of location of the road, and it is my opinion that the County Commissioners and the State Highway Commission cannot change such road and spend money thereon without first obtaining the consent of a majority of the taxpayers of the county, wherever such change amounts to more than a local alteration for the betterment or shortening of the proposed highway.

The question of what is a substantial deviation and what is a mere alteration is one of fact to be determined in each case.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.