Bonds—Banks and Banking—Brokerage Charge—Counties—Interest.

A county has no authority to pay a claim for a commission for handling the interest payments upon bonds issued by the county.

John B. Tansil, Esq.,
County Attorney,
Billings, Montana.

My dear Mr. Tansil:

You have submitted a copy of an interest coupon which is attached to certain special relief fund bonds issued by Yellowstone county and request my opinion as to whether the county can legally pay a brokerage charge in connection with the payment of interest thereon to the Mechanics and Metals National Bank in New York City.

This office has previously held, in an opinion reported in Volume 9, Opinions of Attorney General, page 151, that such a fee is illegal and not a proper charge against the county. The facts in the case there considered were somewhat different than those you present. In that case the interest was payable at a New York bank or at the office of the County Treasurer, at the option of the holder, while in your case the interest is made payable at the New York bank without option.

I can see no particular distinction, however, in this respect for the reason that if the county is bound to pay a brokerage fee where the interest is made exclusively payable at a New York bank, it would likewise be bound to pay such a fee where the holder of the bond exercised his option to have the interest paid at a bank in New York.

When the bonds were voted by the people of the county they authorized the levying of a tax for the purpose of paying the principal and interest of such bonds, but for no other purpose. The money so collected becomes a trust fund which can be expended only for the purpose authorized.

It has been held many times by the Supreme Court of this state, following the well established rule of law, that a county, or its Board of County Commissioners, has no power or authority to act unless such power is expressly granted by statute, or necessarily inferred from powers granted.

Ainsworth v. McKay, 55 Mont. 270;
Edwards v. Lewis and Clark Co., 53 Mont. 359;
State ex rel. Lambert v. Coad, 23 Mont. 131.

The statute allows a county to issue certain bonds and to levy taxes for the purpose of retiring them and paying the interest thereon, but does not, either expressly or impliedly, authorize the payment of a brokerage fee on such bonds, and if the bank at which the bonds or the interest coupons are made payable demands a brokerage fee for its services, that is a matter between the bank and the holder of the bonds.

It is, therefore, my opinion that the claim of the Mechanics and Metals National Bank of New York against Yellowstone county for a commission for handling the interest payments on such bonds is not a proper charge against the county and that no authority exists in the county to pay the same.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.