

## Opinion No. 110.

**Constitutional Law—County Commissioners—Bridge Fund—Contracts Payable from Cash on Hand.**

HELD: A Board of County Commissioners has the power to enter into a contract for the construction of a bridge, which contract will exceed \$10,000, when there is cash on hand in the budget designated for bridge purposes and in an amount sufficient to pay the contract price without violating Section 5, Article XIII, of the Montana Constitution.

December 27, 1954.

Mr. Robert T. Pantzer  
County Attorney  
Park County  
Livingston, Montana

Dear Mr. Pantzer:

You have requested my opinion as to whether or not the Board of County Commissioners of your county may enter into a contract to replace a county bridge, which contract will exceed \$10,000, without the approval of a majority of the electors voting at an election submitting the question. You advise me there are sufficient funds in the current budget to pay this contract and that the item in the budget is designated "Capital Outlay for Bridge Repair or Replacement."

In answer to your question, it is necessary to consider Section 5, Article XIII of the Montana Constitution, which provides in part as follows:

"... No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars (\$10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law."

Section 16-807, R.C.M., 1947, provides the same limitation and the courts in construing this section have been primarily concerned with the meaning of "single purpose." That the construction of a bridge is a single purpose cannot be doubted, in view of the language used in the case of *Nelson v. Jackson*, 97 Mont. 299, 33 Pac. (2d) 822. Also, *Bennett v. Petroleum*

*County*, 87 Mont. 436, 288 Pac. 1018, and *State ex rel. Turner v. Patch*, 64 Mont. 565, 210 Pac. 748.

Whether an indebtedness or liability is incurred when there is cash on hand to pay the obligation has been considered by our Supreme Court. In *Graham v. Board of Examiners*, 116 Mont. 584, 155 Pac. (2d) 956, Section 2 of Article XIII of the Montana Constitution, which imposes a \$100,000 limitation on the state similar to the \$10,000 limit placed on the county was considered. The court in the *Graham* case stated as follows:

"... It has repeatedly been held by this court that there is no debt or liability created when there is cash on hand or revenue provided by the legislature for the biennium to meet the appropriation..."

A like interpretation was given to Section 2 of Article XIII in the case of *State ex rel. Rankin vs. Board of Examiners*, 59 Mont. 557, 197 Pac. 988, where the court said:

"In construing our constitutional provision applicable, we have under consideration the meaning of the words 'debt or liability,' and in our view, the prohibition intended by these words is the creation of a debt or obligation of the state in excess of cash on hand and revenue provided..."

The opinion also stated:

"... The constitutional limitation has reference to such a liability as singly or in the aggregate will obligate the state to an amount in excess of \$100,000 over and above cash on hand and revenues having a potential existence by virtue of existing revenue laws..."

In the case of *State ex rel. Diedrichs v. Board of Trustees*, 91 Mont. 300, 7 Pac. (2d) 543, the Supreme Court held that the interpretation of the words "indebtedness" and "liability" should be the same in Article XIII, Sec. 5, as in Article XIII, Sec. 2. The court said:

"... Clearly the... debts prohibited by the Constitution in excess of \$100,000 without majority approval

of the people at a general election are such as pass the limit of available cash on hand and revenue for which adequate provision has been made by law. And there is no good reason why a different meaning should be placed upon the words 'indebtedness' or 'liability' as employed in Section 5 of Article XIII, placing limitations upon the creation of debts or obligations by the several counties of the state. No provision of law has been made for submitting to the electors the question of the expenditure of cash on hand, raised for a definite purpose, in excess of \$10,000; and by the lawmakers this constitutional restriction has been interpreted as a restriction upon the borrowing of money, as by statute a method is provided for the manner of submitting to the people the question of borrowing money in excess of \$10,000. (Secs. 4717 to 4722; also, Sec. 4712, Rev. Codes 1921.)

an amount sufficient to pay the contract price without violating Section 5, Article XIII, of the Montana Constitution.

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"It seems plain that the constitutional limitation does not apply to the expenditure of cash on hand provided for a specific purpose; but rather to the creation of an obligation to be met and paid in the future by the taxpayers. (Falls City Const. Co. v. Fiscal Court, 160 Ky. 623, 170 S.W. 26; Boettcher v. McDowall, 43 N.D. 178, 174 N.W. 759.)"

In your county's budget, there is an appropriation for bridge-repair or replacement in an amount in excess of \$10,000 and, applying the rule of the above two cases where debt and liability were construed, it must be concluded that the proposed bridge may be constructed without a vote of the electorate.

A similar conclusion was reached in 15 Opinions of the Attorney General 76, No. 96, and 22 Opinions of the Attorney General 40, No. 24.

It is therefore my opinion that a Board of County Commissioners has the power to enter into a contract for the construction of a bridge, which contract will exceed \$10,000, when there is cash on hand in the budget designated for bridge purposes and in