

realized from the authorized levy and cash on hand in the fund, without submitting the proposed expenditure to the voters, without violating Section 5, Article XIII of the Constitution of Montana.

2. The board of county commissioners does not have the power to enter into a contract for classification of the real property in the county, in the amount of \$59,000, when the amount to be realized from a one-half mill levy authorized by Chapter 198, Laws of 1955, is approximately \$11,000.

December 31, 1955.

Mr. Jay M. Kurtz  
County Attorney  
Missoula County  
Missoula, Montana

Dear Mr. Kurtz:

You have requested my opinion as to whether the board of county commissioners has the authority to enter into a contract with a private firm in the amount of \$59,000 for the purpose of classifying and appraising real property within your county, without securing the approval of the qualified electors of Missoula County. You advise me that a one-half mill levy will realize approximately \$11,000 per year.

Chapter 198, Laws of 1955, makes it the duty of the board of county commissioners to classify and appraise real property within the county, under the supervision of the State Board of Equalization. Section 2 of Chapter 198, permits the levy of an annual tax of not to exceed one-half mill upon all real property of the county subject to taxation to furnish funds to accomplish the purpose. The revenue realized from the levy is to be placed in a fund known as the "classification and appraisal fund."

Your question involves an interpretation of Section 5, Article XIII of the Montana Constitution which provides in part:

" . . . 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 ma-

**Opinion No. 54**

**Counties — Constitutional Law —  
When Contracts in Excess of  
\$10,000 Do Not Need Approval  
of Electors**

HELD: 1. The board of county commissioners has the authority to enter into a contract for land classification in the amount which will be

majority of the electors thereof, voting at an election to be provided by law."

While the above-quoted portion of our Constitution has not been construed by our Supreme Court under facts similar to those which you present, yet Section 2, Article XIII, which imposes a \$100,000 limitation on the state, similar to the \$10,000 limit placed on the county, has been interpreted. In *Graham vs. Board of Examiners*, 116 Mont. 584-593, 155 Pac. (2d) 959, it was stated:

"... 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 . . ."

In *State ex rel. Rankin vs. Board of Examiners*, 59 Mont. 557, 568, 197 Pac. 988, the court said of Section 2, Article XIII:

"... 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 case before us, the funds must be considered in esse for the payment of the treasury notes, provision having been made for their levy and collection . . ."

The above-quoted opinions recognize that a debt or liability is not incurred if revenue by taxation, or otherwise, is provided to meet the obligation. As a levy of one-half mill will supply \$11,000 for the purpose, a contract which is not in excess of this amount may be entered into by the board of county commissioners. There is no statutory authority for the board of county commissioners to make a levy in one year for any subsequent years and, as a consequence, the contract for this purpose is limited to the maximum amount of funds realized from the authorized one-half mill levy.

The problem you present has previously been considered by this office in 22 Reports and Official Opinions of the Attorney General 40, No. 24,

and 8 Reports and Official Opinions of the Attorney General 149, which approved contracts in excess of \$10,000 for classification of taxable property.

It is therefore my opinion that a board of county commissioners has the authority to enter into a contract for land classification in the amount which will be realized from the authorized levy and cash on hand in the fund, without submitting the proposed expenditure to the voters, without violating Section 5, Article XIII of the Constitution of Montana.

It is also my opinion that the board of county commissioners does not have the power to enter into a contract for classification of the real property in the county, in the amount of \$59,000, when the amount to be realized from a one-half mill levy authorized by Chapter 198, Laws of 1955, is approximately \$11,000.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General