

VOLUME NO. 44

OPINION NO. 31

BONDS - Authority of county to issue general obligation bonds to fund demolition of abandoned county building;
 COUNTIES - Authority to issue general obligation bonds to fund demolition of abandoned county building;
 COUNTY GOVERNMENT - Authority to issue general obligation bonds to fund demolition of abandoned county building;
 PUBLIC BUILDINGS - Authority of county to issue general obligation bonds to fund demolition of abandoned county building;
 MONTANA CODE ANNOTATED - Sections 7-1-2103(4), 7-5-2101(1), 7-5-2101(2), 7-7-2201(3), 7-8-2102, 7-8-2201.

HELD: The board of county commissioners may issue general obligation bonds to fund demolition of a county-owned building that has been abandoned and poses a threat to the safety and welfare of the community.

May 1, 1992

Merle Raph
 Toole County Attorney
 P.O. Box 518
 Shelby MT 59474-0518

Dear Mr. Raph:

You have requested my opinion concerning the following question:

May a county issue general obligation bonds for the purpose of removing asbestos from and demolishing an abandoned hospital building if the electors vote to demolish rather than remodel the building?

Your question arises because the county wants to demolish an old abandoned hospital building. You have informed me that the county abandoned the

building in 1981 when it was replaced by a new county hospital. Numerous attempts to sell, lease or auction off the building have failed. The building has rapidly deteriorated since it was abandoned. You state that the building is a potential threat to the safety of the community because children can break windows and enter the building virtually unseen. In 1990 the severe deterioration was noted by an inspector from the Department of Health and Environmental Sciences.

An additional concern is the presence of asbestos. Because of the requirements of federal and state regulations and the extreme deterioration, it is financially impossible for the county to proceed with remodeling or demolition without issuing general obligation bonds. See §§ 75-2-501 to 514, MCA. Recent estimates of the cost for renovation and asbestos removal were over \$3 million, while estimates for demolition and asbestos removal were close to \$600,000.

A county is vested with the express authority to "make such orders for the disposition or use of its property as its inhabitants require." § 7-1-2103(4), MCA. Similarly, the board of county commissioners has the express authority to care for and manage county property. §§ 7-5-2101(1), 7-8-2201, MCA. The board of county commissioners further has the express authority to erect, furnish and maintain county buildings, including hospital buildings. § 7-8-2102, MCA.

While the provisions describing a county's authority over its property do not expressly state that a county may demolish abandoned, dilapidated, and potentially hazardous property, such authority is clearly included within the obligation to care for, manage and maintain county property. It is a general rule that public authorities may, as a valid exercise of the police power, destroy a building that is a public health hazard. See 13 Am. Jur. 2d *Buildings* § 45 (1964); 7 A. McQuillin, *Municipal Corporations* § 24.561 (1989). Under section 7-5-2101(2), MCA, the board of county commissioners may perform whatever acts are necessary for the full discharge of its duties. See *Cosby v. County Commissioners of Randall County*, 712 S.W.2d 246, 248 (Tex. Ct. App. 1986) (authority to manage property includes discretion to replace and demolish existing structure as well as construct new building). Moreover, the demolition of buildings that pose asbestos dangers is contemplated by sections 50-64-101 to 107, MCA, as well as by sections 75-2-501 to 514, MCA. See § 75-2-501(4), MCA. Here, given the building's potential threat to the health and welfare of the community, the commissioners have the authority to demolish the hospital building as part of their general duty to manage county property.

The question then is whether the county, under its general duty to care for and maintain its property, also has the attendant authority to issue general obligation bonds for the demolition of the property with elector approval. Generally, the financing for construction and operation of a county hospital is governed by section 7-6-2512, MCA, which authorizes a mill levy for support

of a county hospital, and sections 7-34-2401 to 2418, MCA, which provide the specific methods for financing construction of a new hospital. These provisions are not applicable here, however, because the general financing measures for an existing, revenue-producing hospital or for the issuance of bonds to construct a new hospital do not address the general problem of disposing of the old abandoned hospital.

Under section 7-7-2201(3), MCA, a county may issue general obligation bonds for

constructing, erecting, or acquiring by purchase necessary public buildings within the county, under its control and authorized by law; making additions to and repairing buildings; and furnishing and equipping the same[.]

While this section does not expressly authorize the issuance of bonds for the demolition of a county building, such authority may be implied when issuance of bonds is an absolute necessity to carry out other powers expressly conferred upon a county. 15 McQuillin, § 43.19. Thus, when the authority is essential to accomplish other express powers, then bonds may issue. See also Pennobscot, Inc. v. Board of County Commissioners, 642 P.2d 915, 918 (Colo. 1982); Dietrich v. Deer Lodge, 124 Mont. 8, 218 P.2d 708, 711 (1950); Kruesel v. Collin, 17 P.2d 854 (Wash. 1933) (county may issue bonds to accomplish mandatory duty to care for indigent). Here, given the extraordinary cost of demolishing the building and the building's potential as a health hazard, the authority to issue bonds to demolish the building may be implied because such authority is essential for the county to accomplish its duty to care for and manage its property.

THEREFORE, IT IS MY OPINION:

The board of county commissioners may issue general obligation bonds to fund demolition of a county-owned building that has been abandoned and poses a threat to the safety and welfare of the community.

Sincerely,

MARC RACICOT
Attorney General