

**Board of County Commissioners, Right to Exchange, Sell or Purchase County Poor Farm Lands.**

There is no objection, under the law, to the board of county commissioners making purchase of lands for county poor farm purposes to the extent of 160 acres, nor is there any objection to their making sale of all or any part of said tract and buying an entirely new tract. Where in the interest of the county a part of the 160 acre tract is sold, there is no objection under the law to their making purchase of a quantity of land adjoining equivalent to the tract so disposed of to replace the same.

Helena, Montana, Oct. 26, 1905.

Hon. R. N. Hawkins, Chairman, Board of County Commissioners, Virginia City, Montana.

Dear Sir:—I am in receipt of your favor of the 20th, asking an opinion from my office in relation to the power and authority of a board of county commissioners with reference to the purchase and sale of real estate.

The facts as you present them and upon which you desire an opinion may be briefly summarized as follows: The county of Madison owns a county poor farm of 160 acres and desires to sell or otherwise dispose of 40 acres thereof, and to secure in place and stead of such tract another tract of similar acreage adjoining the remaining 120 acres which is more suitable and desirable for county poor farm purposes than the tract proposed to be disposed of.

The question that you present is, Has the board authority to make such change by purchase, sale or otherwise?

Section 3213, Political Code, specially confers upon the board of county commissioners the power to "purchase, improve and keep in repair a tract of land, not exceeding 160 acres, to be known as a poor farm," and the same authority is given to you in the enumeration of your general and permanent powers by subdivision 6, of section 4230, Political Code.

Under the provisions of the law above referred to, the board of county commissioners are unquestionably limited in their power and authority to purchase lands for use as a poor farm to 160 acres, but, in my opinion, there can be no objection, so long as the law is followed, to their making sale of the entire tract, or any portion thereof owned by the county for the purpose of a poor farm, and replacing the same in part or in whole, if it would seem as a business proposition desirable and to the best interests of the county.

Under said section 4230, in the enumeration of the general and permanent powers of the board of county commissioners, you are expressly given authority applicable to this subject matter as follows:

"Subdivision 8. To purchase, receive by donation, or lease any real or personal property necessary for the use of the county, preserve, take care of, manage and control the same; but no purchase of real property must be made unless the value of the same has been previously estimated by three disinterested citizens of the county, appointed by the district judge for that purpose, and no more than the appraised value must be paid therefor."

"Subdivision 10. To sell at public auction at the court house door, after thirty days' previous notice given by publication in a newspaper of the county, or posted in five public places of the county, and convey to the highest bidder for cash any property, real or personal, belonging to the county, paying the proceeds into the county treasury for the use of the county."

"Subdivision 22. To represent the county and have the care of county property, and the management of the business and concerns of the county in all cases where no other provision is made by law."

I would therefore advise you, pursuant to the statutory law hereinabove quoted, that you have the legal authority to make such exchange of lands, but in doing so you should follow the following procedure, which is clearly outlined by the law, to-wit:

First: Sell the 40-acre tract of the poor farm which you do not wish to retain at public auction at the court house door, after thirty days' previous notice given by publication in a newspaper in the county, or posted in five public places of the county, to the highest bidder for cash, and pay the proceeds into the county treasury to the credit of the poor fund.

Second: Secure the appointment by the district judge of three disinterested citizens of the county to make appraisement of the 40-acre tract which you desire to purchase, and pay therefor upon purchase an amount not exceeding such appraised value.

By following this procedure there can be absolutely no question as to the legality of the transaction, and the money paid into the poor fund, upon sale of the tract and deposited by you, can be drawn out again upon warrants in payment for the tract you desire in place and stead thereof.

It might be well for you to secure a 30 or 40 day option of purchase at an agreed price from the owner of the land which you desire to secure before taking steps to sell the tract which you desire to dispose of.

Respectfully submitted,

ALBERT J. GALEN,  
Attorney General.