

**Board of County Commissioners, Authority to Purchase Lands
for County Poor Farm Purposes.**

A board of county commissioners is limited under the law to the purchase of a tract of land for county poor farm purposes not exceeding 160 acres, but this does not prevent the acceptance on the part of the county of a larger tract of donation. And a county may own and hold a tract of land in excess of 160 acres for county poor farm purposes, provided that not more than 160 acres thereof is secured by purchase.

Helena, Montana, Oct. 31, 1905.

S. V. Stewart, Esq., County Attorney, Virginia City, Montana.

Dear Sir:—I am in receipt of your favor of the 29th instant, relating to our holding respecting the right of a Board of County Commissioners to exchange, sell or purchase county poor farm lands, contained in our letter of October 26th, addressed to Hon. R. N. Hawkins, Chairman of the Board of County Commissioners, Virginia City, Montana.

You say that you fully agree with our said construction of the law, but that there is a condition existing which confronts you not made to appear by Mr. Hawkins in his request for our opinion on this subject, in relation to which you desire further advice from our office, viz: At the time the Board bought the present county poor farm they purchased and paid for 160 acres of land, and the party from whom they purchased made a deed for such tract, and at the same time donated to the county 40 acres additional contiguous to said 160 acres, making a total acreage of 200 acres.

You say, that it appears to the great advantage of the county if it can legally exchange one of its said forty acre tracts for another adjoin-

ing tract of similar acreage, but the question of difficulty now arising is: Will the fact that the county still holds and owns 160 acres of land for county poor farm purposes, after sale of a forty acre tract thereof, prevent their making exchange purchase of the more desirable forty acre tract adjoining the main tract?

Section 3213, Political Code, confers authority specially upon a board of county commissioners to **purchase** for the county a tract of land not exceeding 160 acres for county poor farm purposes, but it will be noticed that the county is not prohibited from owning a larger tract for such purposes, secured otherwise than by purchase. If a tract larger than 160 acres were donated to the county for use as a poor farm, or if a tract of land were donated to the county for like purpose at a time when it already owned by purchase 160 acres of land, the transfer could not be considered illegal and void because the county could not own for such purposes a tract in excess of 160 acres.

Subdivision 8, of section 4230, Political Code, authorizes the board of county commissioners "to purchase, receive by donation, or lease any real or personal property necessary for the use of the county." And under this general authority there can be no doubt as to the right of the board to receive for the county by donation real or personal property for any purpose, and if it were not for the limitations contained in said section 3213 the board might acquire by **purchase** any quantity of land thought to be **necessary** for county poor farm purposes.

There is no limit placed by the law (Subdiv. 10, of Sec. 4230, Political Code), upon the amount or kind of county property, real or personal, which the board are authorized to sell. And, therefore, applying the law and business judgment, we give you as our opinion that there is no objection to the board making the exchange as we have heretofore outlined, even though the county may now own and hold for county poor farm purposes an acreage in excess of 160 acres, provided only, that the actual amount of land in the aggregate secured for the county by the board by **purchase** shall not exceed 160 acres; and, provided, further, of course, that the terms of the donation grant of lands be not disregarded or violated.

Respectfully submitted,

ALBERT J. GALEN,
Attorney General.