

**County Free High School. High School, County. Indebtedness, Limitation on County.**

1. The Board of Trustees of a County Free High School cannot expend more than ten thousand dollars for a single purpose without first securing the approval of the electors of the county therefor.

2. The Board of Trustees of a County Free High School cannot contract any indebtedness or liability in excess of the funds then on hand or available from taxes of the current year or from the sale of bonds.

3. Propositions for the expenditure of county money may be submitted to the electors thereof at a special election.

Helena, Montana, Oct. 22, 1907.

Hon. Theodore Lentz,  
County Attorney,  
Glendive, Montana.

Dear Sir:—

I am in receipt of your favor of the 17th inst., giving additional information relative to the question heretofore submitted by you to this office, to-wit:

"May Section 13, Chap. 29, Laws of 1907, be so construed as to permit the erection of a forty thousand dollar county free high school building without first obtaining the approval of a majority of the electors of the county therefor?"

A contract for the erection of a county free high school building, or for the purchase of a site therefor, is a liability against the county and is clearly within the meaning of the provisions of Section 5, Article 13, of the State Constitution, which provides in part

"No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars (\$10,000.00) without the approval of a majority of the electors thereof, voting at an election to be provided by law."

Courts give to this provision of the Constitution a very strict construction, as will appear from an investigation of the following decisions.

Hefferlin vs. Commissioners, 16 Mont. 349.

Hoffman vs. Commissioners, 18 Mont. 224.

Hotchkiss vs. Marion, et al. 12 Mont. 218.

Tinkle vs. Griffin, et al, 26 Mont. 426.

Shaw vs. Young, et al. 66 Pac. (Wash.) 64.

However there is no doubt but authority exists for asking the permission of the electors of the county to expend the money on hand for the erection and equipment of a building or the purchase of a suitable site therefor. The provisions of Section 8, Chap. 29, Laws of 1907, confer a clear authority upon the Board to raise this money by taxation, but if it is desired to expend more than ten thousand dollars of the money so raised for a single purpose, the provision of the Constitution above cited then requires that the proposition be first approved by a majority of the electors.

Section 13 of said Chap. 29, dealing with the power of the board of trustees, provides in part:

"They shall not, however, make any purchases or enter into any contract whereby obligations are assumed in excess of the amount of funds on hand or available through the levy of taxes for the current year on the issuance of bonds."

Taxes to be levied and collected next year are not available for the current year, hence they cannot be considered at the present time, nor at any time prior to their actual levy. If the Board desires to erect a building at the present time it must confine the expenditure to the amount of money on hand, or that available from the taxes for the current year, or else it must provide for the issuance of bonds in part, or the erection of the building may be deferred until after the levy of next years taxes and the proposition then submitted to the electors as to whether a building costing not exceeding forty thousand dollars (if the money then available under the law amounts to that sum) shall be erected.

So that it appears that the Board now has its choice of three propositions, namely:

1. To submit to the electors the proposition of erecting a school building to cost not exceeding \$26,000.00 and to pay for the same from the funds now on hand.

2. To erect a school building costing \$40,000.00; to expend \$26,000.00, now on hand, in part payment, and issue bonds in the sum of \$14,000.00.

3. To wait until enough money is accumulated in the treasury to erect the kind of a building desired and then submit the proposition to the electors, asking permission to expend that amount of money for that purpose.

The Board has certainly used good business judgment in accumulating this money in the treasury, and its desire to erect the building without incurring any indebtedness therefor is very commendable, but the constitutional provision will not permit of the expenditure of more than \$10,000.00, for any single purpose, without the approval of the electors of the county. If it should be determined to submit this matter to the electors the same may be done at a special election, and,

in that event, we are ready to furnish any assistance which we may be able relative to the procedure to be followed.

Very truly yours,

ALBERT J. GALEN,  
Attorney General.