

**Voting Machines, Purchase Of. County Commissioners,  
Duties of Purchasing Voting Machines. County Indebtedness,  
Limits Upon.**

Under Chapter 168, Laws 1907, the boards of county commissioners in first class counties have authority to rent voting machines upon a stipulated amount per annum. Such expenditure does not come under the provisions of the constitutional limit of ten thousand dollars for any single purpose.

Helena, Montana, May 11, 1908.

Board of County Commissioners,  
Butte, Montana.  
Gentlemen:—

Your letter of the 7th inst. received, containing copy of an agreement proposed to be entered into with the U. S. Standard Voting Machine Company, providing for the use in Silver Bow County of a voting machine heretofore approved by the State Board of Voting Machine Commissioners, in accordance with the provisions of Chapter 168, Laws 1907.

This proposed agreement provides for the rental by Silver Bow County of forty of the voting machines approved by the said commissioners upon the following conditions:

The U. S. Standard Voting Machine Company agrees to rent to Silver Bow county forty of said machines for use until December 1st, 1908, for the sum of \$9,500, for which the county agrees to execute and deliver to said company a warrant for said sum. Said company further agrees that the county may at any time before January 1st, 1909, rent said forty machines for the term of one year, from December 1st, 1908, for the sum of \$9,500.00, said rent to be payable December 1st, 1909. And in case the county shall exercise its option of renting the machines for the year beginning December 1st, 1908, the company agrees that the county may at any time before January 1st, 1910, agree to pay to the company on or before December 1st, 1910, the sum of \$9,000.00,

and upon the payment of said \$9,000.00, the company agrees that the ownership and title of said machine shall pass to the county. The contract further provides for the payment of interest on the last two payments mentioned above at the rate of six per cent.

The question submitted by you is as follows:

Do the provisions of the last sentence of Section 5, Article XIII of the State Constitution, prohibit the commissioners from entering into said agreement?

This provision of the constitution reads as follows:

"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."

It will be noticed that under the terms of the contract the county is not bound at this time to pay more than \$9,500.00, so it would seem that so far as this year's rental is concerned the county commissioners are clearly within the provisions of said section of the constitution, in the event that it applies at all in this case. Therefore the question could not properly arise until such time as the county commissioners should attempt to exercise their option of entering into an agreement for the rental of the machines for the year beginning December 1st, 1908. It then may be urged that the rent for the year beginning December 1st, 1908, should be added to the rent for the year ending December 1st, 1908, and that the two sums aggregate more than ten thousand dollars, and is therefore a violation of said section of the constitution. It might be urged also that the rental of \$9,500.00 is exorbitant for the use of the machines, the aggregate value of which is fixed at \$28,000.00, and that therefore it is intended as a part payment of the purchase price of the machines. In our opinion these objections could not be successfully maintained in the courts. As to the reasonableness of the rental for the use of the machines, it is a matter resting within the sound discretion of the Board of Commissioners, which it is improbable that the courts would attempt to set aside.

As to the expenditure of more than ten thousand dollars it must be considered in connection with the following constitutional provision: Section 9 of Article IX of the State Constitution provides that: "the legislative assembly shall have the power to pass a registration and such other laws as may be necessary to secure the purity of elections and guard against abuses of the elective franchise."

Pursuant to the legislative authority conferred by the above section of the constitution, the legislature adopted the Australian ballot law providing for the registration of voters and election booths and other expensive protections looking to the purity of elections and to guard against abuses of the elective franchise. Under these provisions we understand that a general election in Silver Bow county, at present, costs in the neighborhood of thirty thousand dollars. In other words, the county commissioners each year of a general election must incur a liability in the neighborhood of \$30,000.00 for the purpose of carrying

out the provisions of the law enacted by the legislature for the conduct of such election. Now, the legislature, pursuant to such constitutional provision, has enacted Chapter 168, Laws 1907, providing for the adoption of voting machines, and under Section 3 of such chapter it is provided that "the boards of county commissioners of counties of the first class, and the city councils of cities of the first class, shall adopt and purchase for use in the various precincts any voting machine approved in the manner above set forth in this act.

Therefore, in our opinion, the purchase of voting machines is simply one of the incidental expenses necessary to the conduct of a general election under the general election laws of the state as enacted by the legislative assembly, and that the expenses necessarily incurred in the carrying out of the provisions of the general election law are not covered and included in the constitutional prohibition contained in said Section 5 of Article XIII of the constitution. Furthermore, said Section 5 of Article XIII provides that "no county shall incur any indebtedness or liability," etc. This prohibition is against the county, and in our opinion was intended to prohibit the board of county commissioners from entering into contracts upon their own motion, or judgment, as a board, in which they would bind the county for a sum in excess of ten thousand dollars, without first submitting the matter to the electors of such county. That is, that the county commissioners should not begin any public improvement such as the erection of buildings, bridges, etc., in excess of ten thousand dollars, without complying with the provisions of this section of the constitution. Said section of the constitution, in our opinion, is not broad enough to prohibit the legislative assembly from passing laws, which, in its judgment, are necessary to secure the purity of elections and guard against abuses of the elective franchise. If such a law, legally enacted under constitutional safeguards, in order to be properly complied with, necessarily incurs the expenditure of over ten thousand dollars in a county, it is the duty of the commissioners to comply with such law, provided the expenditure is within the constitutional limit of five per cent of the value of the taxable property therein.

Section 4 of said Chapter 168, in providing the various methods of paying for the voting machines, gives the board of commissioners a wide latitude as to the form of obligation they enter into in purchasing the machines.

You are therefore advised that in our opinion you have authority to enter into an agreement along the lines of the copy submitted by you, and that the same, in our opinion, cannot be successfully attacked in the courts as being in violation of said Section 5 of Article XIII of the State Constitution.

Very truly yours,

ALBERT J. GALEN,  
Attorney General.