

**County Commissioners, Authority to Purchase Property for
County Fair Purposes. Fair, County, Amount of Property
County Commissioners May Purchase, For.**

The county commissioners have authority to purchase property for county fair purposes to an amount not exceeding \$10,000 but before an expenditure in excess of this amount can be made by the board they must be given authority to do so by the electors of the county.

November 2nd, 1911.

Hon. Edward C. Mulroney,
County Attorney,
Missoula, Montana.

Dear Sir:

I am in receipt of your communications of the 1st inst., submitting the question as to the authority of the board of county commissioners to purchase property for county fair purposes when the amount to be paid therefor is in excess of ten thousand dollars; and also submitting for examination a form of notice prepared by you for the sale of refunding bonds by said county.

The provisions of Sec. 5, Art. XIII of the State Constitution, and of Sec. 2876 of the Revised Codes are specific to the effect that the county cannot incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars without the approval

of a majority of the electors voting at an election to be provided by law.

These provisions of the constitution and of the statute have been many times construed by the supreme court of this state, and in every instance, I think, a strict construction has been given to them.

Jankins v. Newman, et al, 39 Mont. 77.

Hefferlin v. Chambers, et al, 16 Mont. 349.

Tinkel v. Griffin et al, 26 Mont. 426.

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

State ex rel Palmer v. Hickman, 11 Mont. 541.

These provisions of the state constitution and of the statute, as construed in the foregoing decisions, absolutely prohibit the board from incurring an indebtedness or liability for any single purpose in excess of ten thousand dollars without first securing the approval of a majority of the electors voting upon the question submitted at an election. It is not required that the approval of a majority of all the electors in the county be secured, but only a majority of those voting at such election.

Tinkel v. Griffin et al, 26 Mont. 426.

The provisions of Chap. 30, Laws of 1911, do not in any manner amend the provisions of said section 2876, and, of course, that section could not amend the provisions of the constitution.

It is quite probable that the board has the authority to make the purchase of property to the amount of ten thousand dollars, and that the board may then submit the question to the electors as to the purchase of the remaining property, or the board may submit the entire question as to the purchase of all of the property to the electors. If, however, the board does make the ten thousand dollar purchase, it may secure a mere option on the remainder of the property pending an election, but it cannot in the option bind the county to complete the purchase, for that would be a liability or the board might enter into a contract to the effect that the county would purchase the property on condition that the electors of the county so instructed, but in either event, and with reference to the purchase of any real estate, it is necessary to keep in mind the provisions of subdivision 8 of Section 2894 of the Revised Codes, which requires an appraisalment of the property. It is also necessary to keep in view the question as to limitation of indebtedness as prescribed in Sec. 5, Art. XIII, of the State Constitution, and Section 2876 of the Revised Codes.

This is merely a reiteration of, and an affirmance of the conclusions reached by you as contained in your letter. The authority of the board to hold a special election is conferred by Sec. 2933 et seq., Revised Codes, and this authority is confirmed by the supreme court in Jankins v. Newman et al, SUPRA. In this connection I desire also to call your attention to this fact: That if the board deems it advisable to call a special election, that, prior to the time when they issue the call for such election, they take up the question with you relative to the registration of voters. There is a very serious doubt as to the constitutionality of Secs. 33 and 34 of Chap. 113, Session Laws of 1911,

and it is very probable that you will reach the conclusion that the provisions of these two sections do not apply, but that registration must be permitted and notice given, as provided in Sec. 18 of said Chap. 113. Should this question be submitted to you and you will notify this office, we will submit to your conclusions reached here relative to this matter with memorandum of authorities.

The form of notice for sale of refunding bonds submitted by you seem to conform to the provisions of the law, with the exception that under the provisions of Sec. 2905 and 2907 the rate of interest which the bonds are to bear should be fixed with certainty, for these bonds are presumed to have been authorized and determined upon in all their provisions prior to the giving of such notice; also, there is a clerical error in the notice in naming the denominations of the bonds, which should read \$1,000.00 instead of \$100,000.00. I herewith return the form of notice submitted.

Very truly yours,

ALBERT J. GALEN,

Attorney General.