

County Seat, Location Of. Commissioners, County, Duty Of. Permanent County Seat, Location Of. Election, Locating County Seat. Statutes, Construction Of. Constitutionality of Statute.

No authority is vested in the board of county commissioners on its own motion to submit to the electors of Teton county the question of locating a permanent county seat, for the reason that Chapter 135, Laws of 1911, does not apply in cases where the permanent county seat has been established three years prior to the enactment of said law.

Where the board of county commissioners desire to issue coupon bonds in the sum of \$100,000.00 it is necessary to submit the proposition to the electors of the county at an election held for that purpose.

The constitutionality of Sec. 4, Chapter 135, not considered.

April 6, 1912.

Honorable D. W. Doyle,  
County Attorney,  
Chouteau, Montana.

Dear Sir:

I am in receipt of your letter of March 29th submitting the questions:

1. Under Chapter 135, Sec. 12 of the laws of 1911, must the county commissioners of Teton county submit to the electors at the general election this fall the question of locating a permanent county seat?

2. Must the county commissioners submit to a vote of the people the question of issuing coupon bonds where the bonds, to be issued amount to one hundred thousand dollars, and are to be issued for the purpose of building bridges and repairing and constructing highways, and where no bridge is to cost ten thousand dollars and where the amount to be expended upon any one road, does not equal the sum of ten thousand dollars?

3. Is paragraph 4, of the section just quoted constitutional?

The first question submitted relates to the construction of Chapter 135, Laws of 1911, concerning the location of permanent county seats in new counties, etc., and particularly of the last paragraph of Section 12 of that Act. This paragraph reads as follows:

"The provisions of this section shall not apply in any case where there has been a permanent county seat located and maintained for a period of three (3) years from the date immediately subsequent to the date of the approval of this act, whether the same was located by a legal election, or otherwise."

The provisions of this paragraph are contradictory and it is impossible to give literal construction to the language therein used.

The phrase "has been" relates to the past. The word "subsequent" relates to the future. The word "from" relates either to the past or to the future as indicated by the connection in which it is used. If, therefore, we say that this paragraph relates to the past in accordance with the meaning of the phrase "has been," we violate the meaning of the word "subsequent" and vice versa. It is very apparent that the actual or literal meaning of the words and phrases used in this paragraph can be of little aid in ascertaining the real intent and purpose of the legislature in enacting it. The act itself from conditions now existing in this state relative to counties heretofore created may be looked to in order to ascertain the true intent of the legislature in inserting this provision in the Chapter. From these conditions this paragraph cannot be construed as a statute of limitations commencing on March 10th, 1911, and extending forward into the future unless we presuppose that the legislature at some future time will enact a law locating a county seat by special enactment in violation of Sec. 2, Art. XVI of the State Constitution, for that is the class of cases to which the act has undoubted reference. We cannot suppose

that any future legislature is going to violate the mandates of the Constitution. Hence, to give this provision any meaning at all we must conclude that it relates to the past rather than to the future and that the word "subsequent" is used therein should read "prior."

Under this construction of the Act it has no application whatsoever to any county in which the county seat has been permanently established for three years or more prior to the 9th of March, 1911. It cannot, therefore, effect Teton county for the county seat has been established there much longer than that. Hence, the county commissioners of that county have no authority of their own motion to submit the question of the location of the county seat to the electors, either at a special election or a general election. If the electors of the county desire to remove their county seat they may do so in the manner provided by law for that purpose.

2. Sec. 2933, et seq., Revised Codes, make it obligatory upon the board of county commissioners to submit the question of issuing bonds to the electors of the county, and it would seem too that under the provisions of these sections that the particular purpose for which the money is to be used must be determined, which must be included in the notice of election as provided in Sec. 2935.

3. Regarding the constitutionality of Sec. 4, of the Act, I will say, that it is the settled policy of tis office never to hold an Act of the Legislature unconstitutional, unless it is in conflict with the provisions of that instrument and is so glaring that no doubt can arise respecting it. But inasmuch as this Act does not apply to your county, under the holdings here made, I will not make specific investigations as to the constitutionality of said section.

Yours very truly,

ALBERT J. GALEN,

Attorney General.