

Counties, Contracts by. Expenditures, for Single Purpose. Channels, Change of Course of. Power, of County Commissioners to Change Course of Channel.

The county commissioners have authority to change the course of a stream by altering its course if the purpose be to protect public roads and adjacent taxable property.

Whether a contract for the changing of a channel coupled with the repair of a public bridge is a single purpose contract depends upon the test as to whether the one is dependent upon the other.

Facts analyzed and held to embrace two independent matters of contract, hence though the total contemplated expenditures may exceed \$10,000, the commissioners may let contracts therefor without calling special election.

Feb. 13. 1914.

Hon. Henry Good,  
Chairman Board of County Commissioners,  
Kalispell, Montana.

Dear Sir:

I have your letter of the 5th instant, as follows:

"The commissioners of this county have been contemplating some work consisting of the changing of main channel of Flathead River at a point near Kalispell, also repairing of the steel bridge east of Kalispell, crossing said river; this work would, no doubt, cost to exceed \$10,000.

"The reason for proposed change of main channel of this river is that every spring, on account of Flathead River overflowing banks, several small bridges on other streams are in danger and need repairs; also a large amount of taxable property is overflowed each year and these taxpayers are demanding some attention to changing course of river by building wing dams, etc.; also each spring we have about two miles of first class road that is overflowed and needs expenditure of several thousand dollars to put in shape again; and we feel that the present bridge would hold so much longer, if channel was straightened.

"I would like to know if, in your opinion, the commissioners would have authority to expend, say, \$10,000.00 on the changing of channel, and do necessary repair work on bridge

at cost of about \$4,000.00, would this not be considered two contracts, or would the changing of river and repair of bridge across said river be considered same piece of work?"

The tenor of your letter seems to indicate that two distinct pieces of work are contemplated by your board, the one having reference to the repair of a bridge and the other to changing the course of Flathead River, for the ostensible purpose of protecting bridges over other streams to prevent overflow and consequent damage to about two miles of public road, and to protect adjacent taxable property. The mere fact that the bridge which it is sought to repair may have better protection and last longer if the channel be straightened does not, in my opinion, serve to characterize the entire enterprise as a single transaction, unless it be impossible to repair the bridge without at the same time changing the course of the channel. In the absence of a more complete statement of facts, and a plat or diagram of the existing physical conditions, I am of the opinion that the test to be applied in determining whether a single purpose only is to be subserved is whether the bridge may be repaired without changing the channel, or whether the channel may be changed without repairing the bridge. The bridge repair work includes, of course, the approaches thereto and culverts.

Revised Codes of Montana, 1907, Sec. 1416.

Jenkins v. Newman et al. 39 Mont. 77.

If the changing of the channel is primarily for the purpose of protecting public roads and other property, as you indicate, it appears that under the law the commissioners have the authority to proceed, for

"The board of county commissioners of the several counties of the state have general supervision over the highways within their respective counties. They must \* \* \* 8. Cause to be done whatever may be necessary in their judgment and discretion for the best interests of the road districts of the several counties."

Paragraph 8, Sec. 2, Chap. 3 of Chap. 72, Session Laws of the Thirteenth Legislative Assembly.

Basing my conclusion solely upon the facts as disclosed by your letter, I am of the opinion that Art. XIII, Sec. 5, of the Constitution will not be contravened by the letting of two separate contracts for the two pieces of work as contemplated, provided that neither exceeds the sum of \$10,000, and that the county commissioners of your county have authority to advertise for bids according to law, and therefore to let contracts if suitable bids be received.

Yours very truly,

D. M. KELLY,

Attorney General.