

County Commissioners, Power of. Power, of County Commissioners. Courthouses, How Located.

The Board of County Commissioners in a proper case may sell lands owned by the county and pay the money into the treasury. The location of the courthouse is a matter within the discretion of the Board of County Commissioners, and they may sell lands previously bought for a courthouse site in cases where they are not bound by some reason to locate the courthouse in a certain place.

January 25, 1915.

Hon. L. V. Beaulieu,
County Attorney,
Havre, Montana.

Dear Sir:

I am in receipt of yours under date the 11th instant, (submitting for my opinion the question of whether a board of county commissioners may now sell a certain block of land which was bought by them two years ago for a court house site, without a vote of the people, and without a vote to purchase another site for the same purpose. Your statement of facts shows that the land was bought two years ago after the board had advertised for offers without any vote from the people, and without any condition being put in the deed as to the purpose for which it was to be used. I gather the impression, however, that the advertisement for offers contains some statement that the site was to be used for a courthouse. At the last election a question of bonding the county for one hundred twenty-five thousand dollars for building a court house and jail was submitted to the people and carried. The question of the location within the county seat of the county buildings, is a matter within the discretion of the board of county commissioners, and I am of the opinion does not have to be submitted to a vote of the people.

Section 2894, Subdivision 8 and 9, Revised Codes.

Our Supreme Court has held that as to matters within the discretion of the board, the consent of the electors is not required, and even though such questions be inadvertently submitted, the vote of

the electors would not enlarge or restrict the action of the Board upon jurisdictional matters.

Morse vs. Granite Co. 119 Pac. 286-290.

As you have noted, Subdivision 10 of Section 2894, Revised Codes of 1907, gives the board of county commissioners authority to sell any property, real or personal belonging to the county. The question of this power has heretofore been passed upon by this office in an opinion to the Hon. R. N. Hawkins, Chairman of the Board of County Commissioners, Virginia City, and found in Volume 1 of the Opinions of the Attorney General at page 233.

From a consideration of these provisions of the Code, I am, therefore, of the opinion that the Board of County Commissioners of your county may sell the block of land owned by the county in the way provided by Section 2894, and pay the money into the treasury. This must not be construed, however, as meaning that they may exceed the amount of their bond issue in the purchase of a site, and construction of a court house.

Yours very truly,

D. M. KELLY,
Attorney General.