

**Poor Farm, Authority to Purchase. Board of County Commissioners, Power of.**

Under the provisions of Sec. 2063, Revised Codes, and decisions in cases cited in opinion, the board of county commissioners has power to purchase, improve and keep in repair a tract of land, not exceeding 160 acres, to be known as a poor farm, and the right to issue bonds for such purpose.

March 16, 1915.

Hon. R. J. Wiggehorn,  
County Attorney,  
Red Lodge, Montana.

Dear Sir:

I am in receipt of your recent letter propounding the inquiry as to whether the county commissioners of your county may issue bonds for the purpose of purchasing and equipping a poor farm upon the following state of facts:

"At the last regular fall election, the commissioners submitted to the vote of the people the question of issuing bonds to the extent of twenty-five thousand dollars, for the purpose of purchasing and equipping a poor farm. The vote was favorable. Thereupon the commissioners proceeded in accordance with law to advertise for bids, the lowest bidder being the Harris Trust and Savings Company of Chicago, who deposited their certified check for \$1,200 with the commissioners as an evidence of good faith."

You state in your letter that you have advised the commissioners that they have no authority to issue bonds for the purchase of a poor farm, but that it would be proper to issue bonds for the equipping of a poor farm and constructing the building. The conclusion reached by you being that, under the law, bonds may be issued only for necessary building sites, for the construction of necessary public buildings, and for the construction of bridges and highways, and that a poor farm is not a building site. Under Section 2894, paragraph 6, Revised Codes, the Board of County Commissioners has jurisdiction and power to provide a poor farm for the support of the poor of the county. Under subdivision 8 of the same section, the power is given to purchase, receive by donation or lease, any real or personal property necessary for the use of the county.

Paragraph 27 of the same section, confers authority to issue on the credit of the county coupon bonds to an amount sufficient to secure the necessary funds for the procurement of necessary building sites, for the construction of necessary public buildings, and for the construction of bridges and highways. Section 2063, R. C., reads as follows:

"The board may purchase, improve and keep in repair a tract of land not exceeding one hundred and sixty acres, to be known as a poor farm, and to erect thereon suitable work houses for the use, health and employment of all persons as are a county charge, and the poor farm, with the work houses and the persons who are a county charge, must be under such

rules and regulations as the board orders; and may also provide for the care, support and maintenance of the sick, poor and infirm of the county upon the poor farm."

I assume from the tenor of your letter that the bond election was in all things regular, and that your conclusion is based solely upon the ground that, while the commissioners may issue bonds for the construction and equipment of necessary buildings, the farm, itself, could not be considered as a building site, and it must, therefore, be acquired by means other than a bond issue. I believe your conclusion to be erroneous. A somewhat analagous proposition was considered by our Supreme Court in the case of YEGEN vs. BOARD OF CO. COMMISSIONERS, 34 Mont. 80, in which the court in considering the validity of a statute creating a state board of health, and referring to certain provisions therein, which authorized the Board of County Commissioners to erect a detention hospital, said:

"While these sections do not in express terms empower the boards of commissioners to acquire sites for the erection of detention hospitals for their respective counties, they do confer the power to build them, and, by the well-settled rule that every power necessary to execute the power expressly granted is necessarily implied, the power to acquire by purchase or otherwise suitable sites for these hospitals is necessarily implied; for it would be idle to say that the boards have power to erect suitable buildings for the expressed purpose, and then say that they have no power to proceed because there is no express grant of power to purchase suitable sites for them."

See also Morse vs. Granite Co., 44 Mont., 78.

Reid v. Lincoln Co., 46 Mont., 32.

In the light of the doctrine announced in these decisions, the power conferred upon the Board, under Section 2063, above, to purchase, improve and keep in repair a tract of land, not exceeding one hundred sixty acres to be known as a poor farm, carries with it the right to issue bonds for such purpose, for such tract of land would be considered a building site.

Yours very truly,

D. M. KELLY,

Attorney General.