

**County Commissioners—Expenditures Exceeding \$10,000  
on Roads.**

County Commissioners need not have special authority from electors before expending \$10,000 for maintenance of highways.

July 21, 1917.

To the Honorable Board of County Commissioners,  
Superior, Montana.  
Gentlemen:

You have requested my opinion upon the question of your authority to issue warrants on the road fund in excess of \$10,000.00 without a vote of the electors.

The last sentence of Article XIII, Section 5 of the Constitution of Montana, is as follows:

"No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars (\$10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law."

It has been held by our Supreme Court that the construction of highways, ferries and bridges is a single purpose, as a general scheme of improvement of the highways in a county, within the rule that at a bond election each separate proposition must be voted upon separately. See *Reid v. Lincoln County*, 46 Mont. 31.

But it was said in *Panchot v. Leet*, 50 Mont. at 320-1:

"A dismal picture is presented of the confusion which will ensue if the approval of the electors must be had every time the county proposes to expend \$10,000 or more; and, as an example of such confusion, it is said: 'Assuming the statement made by the press to be true that Silver Bow expended last year more than \$100,000 on her poor, then it must be that such expenditure was unlawful, unless it followed upon a vote of the people, which probably did not take place.' The only confusion suggested by this is a confusion of thought; for it is perfectly obvious that the distribution of various amounts for the relief of various indigent persons, even though the aggregate exceed \$10,000 taken from the county poor fund, is in no wise analogous to the expenditure of a sum certain for the single purpose of erecting a public building. The first is a distribution, founded on a duty expressly imposed, to meet an ever-present condition encountered in the regular and normal functioning of the county; the second is an expenditure, founded on a liability for a single, occasional purpose, forbidden under certain conditions." \* \* \*

Chapter II, Section 1 of Chapter 172 of the 1917 Session Laws, known as the General Highway Law, provides in part as follows:

"For the purpose of raising revenue for the construction, maintenance and improvement of public highways, the Board of County Commissioners of each county in this State shall annually levy and cause to be collected a general tax upon the taxable property in the county of not less than two mills, and not more than five mills on the dollar, which shall be payable to the county treasurer with other general taxes." \*

\* \*

And by Chapter III, Section 2 of this same Act:

"The Board of County Commissioners of the several counties of the state have general supervision over the highways within their respective counties."

"They must cause to be surveyed, viewed, laid out, recorded, opened, worked and maintained, such highways as are necessary for public convenience, as in this Act provided." \* \* \*

A minimum levy of two mills upon the assessed valuation of only \$5,000,000 would produce a fund of \$10,000. And it cannot be seriously

urged that in case such fund exceed \$10,000, the commissioners would be obliged to have special authority from the voters through an election before they could spend such fund in the repair and maintenance of highways throughout the country. If the commissioners propose to construct a single bridge costing in excess of \$10,000, it would doubtless be necessary for them to be so authorized through the electors. This does not mean, however, that they would have authority to issue warrants in excess of funds on hand and to be derived from the levy of taxes for the current year.

Respectfully,

S. C. FORD,

Attorney General.