

Counties—Expenditures in Excess of \$10,000.00.

County Commissioners have no authority to expend over \$10,000.00 for land, buildings and improvements for the county poor farm without being so authorized by a special election.

August 3, 1917.

Mr. Frank A. Weinrich,
Chairman, Board of County Commissioners,
Plentywood, Montana.

Dear Sir:

I am just in receipt of your letter of July 31st from which it appears that your Board desires to make some arrangement to take care of the poor by purchasing a farm, constructing buildings thereon and providing a poor farm for the County. You state that it will cost about Five Thousand Dollars for the land, about Eight Thousand Dollars for the main building, about Two Thousand Dollars for the barn and about Five Hundred Dollars for other improvements, making a total of over Fifteen Thousand Dollars.

You have asked my opinion on the question as to whether or not the Board of County Commissioners would be authorized to make a separate contract for each of the items of expenditure without calling a special election.

Section 2063 of the Revised Codes of 1907 provides in part as follows:

"The Board may purchase, improve and keep in repair a tract of land not exceeding one hundred 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 * * *."

But the last sentence of Article XIII, Section 5, of the Constitution provides:

"No county shall incur any indebtedness or liability for any *single purpose* to an amount exceeding Ten Thousand (\$10,000.00) Dollars without the approval of a majority of the electors thereof voting at an election to be provided by law."

Our Supreme Court in *Hoffman v. Gallatin Co. Commissioners*, 18 Montana, on page 239, after quoting the above provision of our Constitution, said:

"This is a general limitation upon the power of county boards, inhibiting their right to incur any debt or liability for one purpose only, in excess of \$10,000, without the approval of the majority of the electors voting as may be provided by law."

The following quotation is from the case of *Hefferlin v. Chambers*.

16 Montana at 351:

"If we were to sustain the proposition of appellants in this case, it would be to allow county commissioners to expend more

than \$10,000, or incur an indebtedness or liability exceeding that sum, if they simply resorted to the evasion of dividing the total amount into several sums, each less than \$10,000, and expending each of said several sums, or incurring each of said several liabilities, at different times. Under such construction they could expend \$9,999 in each of several successive years, and the total of said amounts all for one purpose. If they could do this in each of several successive years, why not in each of several successive months or days? It is clear that such conduct would be a gross violation of the constitutional provision, * * *."

See also *Jenkins v. Newman*, 39 Montana 77, and opinions of Attorney General, Vol. 6, page 172.

In many instances County Commissioners in this state have attempted to evade the above restriction in our Constitution by letting several contracts, each less than \$10,000, where the whole amount involved, however, was in excess of that sum. Our Supreme Court has repeatedly held that if the total expenditure is for a single purpose and is in excess of \$10,000, the Board of County Commissioners must secure the approval of the electors before making such expenditure. It appears to me that all of the items of expenditure suggested in your letter are for one single purpose, that of providing a County Poor Farm and therefore your Board would have no authority to let these separate contracts, as suggested in your letter, although no contract will be in excess of \$10,000, without calling a special election in the manner provided by law.

Mr. Justice Sanner in delivering the opinion of the Court in *Panchot v. Lect*, 50 Montana, at 321 said:

"Such examples and similar arguments have, however, been advanced from time immemorial, to avoid some constitutional requirement. Under them any expenditure might be justified, any official act defended, and every safeguard designed to protect the public from prodigality be consigned to the limbo of political delusions. Happily, no such thing is possible, as yet. The Constitution still stands 'mandatory and prohibitory,' and Section 5 of Article XIII is still intended to limit the power of every county, through any agency whatever, as to an expenditure for a single purpose to a certain figure, unless the approval of the people for such expenditure has been previously secured."

I am therefore of the opinion that it will be necessary to call a special election before your Board proceeds to incur an expense for a County Poor Farm in excess of \$10,000.

Respectfully,

S. C. FORD,

Attorney General