

Highways—Federal Aid Road Act—Power of Counties to Expend in Road Construction and Improvement a Sum in Excess of \$10,000 on a Continuous Section of Road—Counties Powers of in the Construction and Improvement of Highways.

Held that in the case submitted it would be necessary to first submit the question to electors before the highway could be built or improved.

July 17th, 1918.

Mr. Paul D. Pratt,
Chief Engineer,
State Highway Commission,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of recent date requesting my opinion with reference to the following:

"In the operations of the State Highway Commission, and in particular, the application of the provisions of the Federal Aid Road Act, approved July 11, 1916, a question has arisen involving the power of the county to expend in road construction or improvement, a sum in excess of \$10,000.00, on a continuous section of road. The question involved is set forth in a communication of date under May 10, 1918, from William M. Williams, Solicitor of the Federal Department at Washington, D. C. This communication is attached hereto for a more complete explanation of the Solicitor's contention."

An examination of the Solicitor's letter referred to shows that the contemplated project is the improvement of 17.5 miles of the Red Trail road in Wibaux County, the estimated cost of the improvement being \$25,272.76, Federal aid being requested for 50% thereof, leaving the remaining 50% which will be in excess of \$10,000.00, to be paid by Wibaux County.

The latter part of Section 5 of Article XIII of the Constitution of this State 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 elec-

tors thereof voting at an election to be provided by law."

It is possible that if a board of county commissioners should expend more than \$10,000, in any one year, in improving the roads within such county, expending different amounts on many different roads, the total amount expended for such purpose in such year on any one road not exceeding \$10,000, but the total amount so expended on all roads exceeding \$10,000, the total amount so expended would not be considered as having been expended for a single purpose, (*Panchot vs. Leet*, 50 Mont. 314, 146 Pac. 927), but if a board of county commissioners should expend in excess of \$10,000 in any one year for the purpose of improving a particular piece or portion of one road it would undoubtedly be an expenditure for a single purpose. (*Hefferline v. Chambers*, 16 Mont. 349, 40 Pac. 787.)

Here the whole of this road which is to be improved is included in one project. The contemplated work will constitute one improvement, and not a series of improvements, and unquestionably the money expended for such purpose will be an expenditure for a single purpose.

I am, therefore, of the opinion that by making this improvement, Wibaux County will incur an indebtedness or liability for a single purpose, and that as the portion of the cost of making such improvement which Wibaux County will be required to pay will be in excess of \$10,000, the board of county commissioners of such county cannot make such improvement or incur such indebtedness or liability without first securing the approval of a majority of the electors of said county at an election at which the question of incurring such indebtedness is submitted to the electors of such county.

Respectfully,

S. C. FORD,

Attorney General.