

**Highways—Expenditures in Excess of \$10,000.00—Election to Authorize Issuance of Bonds For—County Commissioners, Powers Of.**

Where the electors have authorized the issuance of bonds in excess of \$10,000.00 for the construction of highways, it is within the power of the county commissioners to designate the portion of the highway upon which such expenditure shall be made without further authorization.

December 13, 1919.

State Highway Commission,  
Helena, Montana.

Gentlemen: \

I am in receipt of your request that I advise you whether, when a Board of County Commissioners has been authorized by an election to issue bonds for the construction and maintenance of highways and bridges, such board is prohibited by Section 5, Article 13, Constitution, from expending out of the funds received from the sale of such bonds, in excess of \$10,000 on any one highway, highway project or bridge.

The constitutional provision 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."

Section 2 of sub-chapter II of Chapter 141, Session Laws 1915, as amended by Chapter 172, Session Laws 1917, authorizes a Board of County Commissioners, whenever in the judgment of said board it becomes necessary or advisable to raise revenue for the improvement or maintenance of any main highway or state highway, to issue, on the credit of the county, coupon bonds to such amounts as said board may find necessary, the proceedings in connection with the issuance of said bonds to be the same as that provided for the issuance of other county bonds by Articles III and V of Chapter II, Title II, Part IV of the Political Code.

Article III of Chapter II, Title II, Part IV of the Political Code is composed of Sections 2905 to 2926 inclusive, Revised Codes 1907. Section 2905, as amended by Chapter 32, Session Laws of 1915, vests the Board of County Commissioners with power and authority to issue and negotiate on the credit of the county, coupon bonds for the construction of necessary public buildings, highways and bridges. Section 2906 prescribes the form of such bonds and the manner in which the same shall be executed. Section 2907, as amended by Chapter 32, Session Laws 1915, provides for the sale of such bonds and the manner in which notice of sale shall be given and the bonds sold.

Article V of Chapter II, Title II, Part IV of the Political Code is composed of Sections 2933 to 2938 inclusive, Revised Codes 1907, and has reference to the submission of questions concerning the raising of money to the electors for their approval. Section 2935 requires a notice of the election to be given, in which notice the amount to be raised and the *object of the loan* must be clearly stated, such notice to be given and the election held and conducted, and the returns made in all respects in the manner prescribed by law in regard to the submission of questions to the electors of a locality under the general law. Section 2936 provides that if a majority of the votes are cast in favor of the loan, then the board may make the loan, issuing bonds, or otherwise, as may seem best for the interests of the county.

The notice of election, in this particular instance, the issuance of bonds to the amount of \$150,000 by Meagher County, described the object of the loan in the following language:

"Procuring funds wherewith to make adequate the road system of said county by the construction and improvement of highways and bridges therein which may be lawfully constructed or improved with the proceeds of said bond issue."

Here the object of the loan was not to procure funds to improve or construct any one particular highway, but to improve and construct all such highways and bridges which the board should deem necessary and proper to improve or construct.

In the case of Independent Highway District No. 2 of Ada County v. Ada County (Idaho )134 Pac. 542, while the particular constitutional provision here under consideration was not considered, throws much light on the general proposition. There it was said:

"Counsel for plaintiff contends, first, that the notice calling the election does not contain an adequate statement of the purpose for which said bonds are to be issued. Said notice, after reciting the action of said board and declaring that in the opinion of the board it was for the best interests of the county and the public good to bond the county for the sum of \$200,000 for the construction and repair of roads and bridges, proceeds as follows: 'Notice is hereby given that on Wednesday the 25th day of June, 1913, an election shall be held according to law for the purpose of determining whether or not the said Ada County, State of Idaho, shall issue bonds in the sum of two hundred thousand dollars, the proceeds thereof to be used in the construction, building and repair of roads and bridges within said Ada County, State of Idaho.' It is contended that such notice ought to have specified the particular roads or bridges that were to be constructed, built and repaired; that that ought to be done so that the voter could intelligently approve or disapprove the plans of the commissioners; that there might be a reasonable limit placed upon the commissioners in spending the people's money."

"The provisions of Section 1962, Revised Codes, authorizes the issuance of bonds by the county under certain conditions and for the following purposes: 'For purchasing a site and erecting a courthouse and jail or a jail thereon, or for the construction or repair of roads or bridges,' and for other purposes which it is not necessary to be stated here. Section 1968 directs that if the question of bonding the county is submitted to the voters, the board shall cause notice of the intention to hold such election to be given, and such notice shall recite, among other things, regarding the election, 'the purpose thereof.' The notice of said election directs that such election shall be held for the purpose of determining whether bonds in the sum stated shall be issued, and the 'proceeds thereof to be used in the construction, building and repair of roads and bridges within said county.' The people, then, of Ada County, were fully apprised by said notice that they were called upon to vote as to whether or not bonds should be issued in the sum of \$200,000 for the construction and repair of roads and bridges within the county, and the question is presented, was it necessary that the notice specify the particular roads or bridges that were to be constructed or repaired by the proceeds of the sale of such bonds?"

"The statute of this state under which said notice was given and said election was held provides that the purpose only need be stated in the notice, for which the proceeds of the bond issue shall be used, and does not require that the notice shall specify or set forth the particular roads or bridges intended to be constructed or repaired, or the portion or part of the proceeds of the sale of such bond issue that shall be used in the repair and construction of bridges separate from the portion to be used in the repair or construction of roads. Under the statute the Board of County Commissioners is given a large discretion in regard to this matter. It is not supposed that the Board of County Commissioners will build either roads or bridges in parts of the county where they are not needed, but the presumption is that they will build them in the parts of the county where they are most needed, and where they will be most beneficial to the people of the county. If the people do not desire to vote bonds, where the board has such large discretion in the matter, they are not compelled to do so."

"Our statute provides that the bonds may be issued for the construction and repair of roads and bridges, and a notice calling an election which states such purpose is good. Evidently the word 'purpose' as used in said Section 1962, Revised Codes, and in

the general bond act (article 6, c. 2, tit. II, Rev. Codes, Sections 1960 to 1972 inclusive) applies only to those purposes set forth in the statute and not to the specific works of construction which may be carried on under one of these main purposes."

"Nowhere in our statute is it made mandatory upon the board to designate the specific purposes for which the proceeds of such bonds shall be used, other than in the construction and repair of roads and bridges generally as distinguished from the construction of courthouses, jails, etc., as provided by said Section 1962."

"Both bridges and roads are but parts of one general system. It would be impossible to designate the proportional part of the proceeds of the bond issue that would be required for the construction of bridges and the proportional part that would be required for the construction of roads or highways, until the matter had been carefully determined by an engineer, and no doubt the legislature, if they considered the matter at all, considered that the proceeds of the bonds voted for the construction of roads and bridges would be properly applied by the board in the construction of roads and necessary bridges to make such roads complete. It was not necessary for the Board of County Commissioners to employ engineers for the purpose of making a careful estimate of the cost of the construction of the roads they desire to construct, or to ascertain the required amount necessary to construct bridges on such road. Under our law the bridges are a part of the road. The bridges, taken with the other parts of the road, constitute the highways of the county."

In the case of *Blaine v. Hamilton* (Wash.) 116 Pac. 1076, 36 L. R. A. (NS) 577, the supreme court of Washington said:

"Counsel for the appellants, in his oral argument, stated, that the true test of whether a proposition is single is: Will it stand alone? This, we think, is but one of the tests of singleness, and might often be no test at all. The true criterion is: Are the several parts of the project so related that united they form in fact but one rounded whole? Neither of two public highways, converging at a common point or upon a highway common to both, would stand alone; but there are few cases which would hold that bonds were invalid where the two were submitted as a single project."

In the case of *Coleman v. Town of Eutaw*, 157 Ala. 550, 47 South. 703, it was said:

"But where the purpose evolved in the blending is the product of two of the purposes enumerated in the act for which bonds may be issued, and they might naturally and reasonably be deemed or made a part of one of a more general scheme, we are of the opinion that the act does not inhibit the exercise by the governing body of a discretion to blend into one proposition for submission to the voters such enumerated purposes; for instance we merely suggest the building of bridges and constructing roads."

In the case of *Clark v. City of Los Angeles*, 116 Pac. 966, the Supreme Court of California held the submission to electors of a municipality of a proposition to incur an indebtedness for harbor improvements by the construction of docks, wharves and warehouses, with the streets and waterways necessary or convenient for their use and for access to them from the land on one side and from the water on the other, is but the statement of a single purpose, plan or object.

In the case of *Reid v. Lincoln County et al.*, 46 Mont. 31, 125 Pac. 429, which involved the validity of certain bonds issued by Lincoln County for the construction and maintenance of highways, bridges and ferries, our Supreme Court used the following language:

"Article XIII, Section 5 of the State Constitution, provides that no county shall incur an indebtedness or liability for any single purpose to an amount exceeding \$10,000 without the approval of a majority of the electors therein voting at an election provided by law. This constitutional restriction is a limitation upon the authority of the Board of County Commissioners; it has no reference to the power of the people. We agree with the learned counsel for the appellant that this provision was intended to vest in the electors of the county the power to determine whether a proposed indebtedness, exceeding \$10,000 for the construction of certain contemplated improvements, shall be incurred. But counsel places altogether too narrow and rigid construction upon the constitutional and statutory provisions relating to the subject. Unless expressly or impliedly prohibited from so doing by other constitutional declarations, the people of a county may spend their money for any object which they may desire. The power of the Board of County Commissioners is limited, but that of the people themselves is unlimited, save as heretofore suggested. They may intrust to the board the expenditure of their funds if they see fit. They may rely upon the judgment and discretion of the board to any extent they desire, and the only condition precedent to a delegation of authority by them is that the board shall give such notice of its contemplated action as will enable them to vote intelligently thereon, and in such a way that it shall not be necessary to accept or reject one of two or more projects which have no reasonable relation to each other, in order to express satisfaction or dissatisfaction with others which are improperly submitted as one general plan. It was therefore permissible for the people of Lincoln County to delegate to the Board of County Commissioners the power to exercise a reasonable discretion to the details of the plan contemplated. The fundamental and initial question to be determined in all cases is whether the people are willing to authorize the commissioners to spend a definite amount of money for a certain public improvement. It was declared, in argument by counsel for both sides, that Lincoln County, one of the new counties of the state, is almost devoid of the necessary highway facilities to enable the people to get from one part of the county to another without great expense and loss of time. The resolution of the county commissioners recites that in their judgment it is essential to the future growth and prosperity of the county that an adequate system of highways, bridges, and ferries be constructed, all connected, and making accessible each city and town in the county. We know that large portions of the county are mountainous and that many large streams flow within its borders. The project as proposed does not deal with separate improvements, independent of each other, and disconnected in point of utility. It is one large scheme involving a system of highways, bridges and free ferries. We think the employment of the word 'system,' qualified by the information that it related to highways, bridges and free ferries, which is descriptive of what the plan or system comprehends, was a sufficient compliance with the terms of the statute. The opportunity is perhaps propitious as any which may occur for a declaration by this court that our constitutional and statutory laws were designed to clothe the Boards of County Commissioners of the state with large discretionary powers in dealing with projects like the one we have under consideration. Certain well defined constitutional restrictions

must at all times be recognized and observed; but, aside from these, the policy of the law is that the mere details of contemplated public improvements shall be left to their discretion. Where explicit statutory directions are given, they must, of course, be complied with; but all that is necessary in the initiation of a plan like the instant one is, in general, that the people shall be given an opportunity to intelligently exercise their judgment. If county board and similar administrative bodies are to be continually harassed and hampered by the nice technicalities of the law, often times lacking in substance and devoid of real merit, the settlement and development of this vast northwestern empire will be greatly impeded and retarded. As we read the statutes, the policy of the lawmaking bodies has been, rather, to make proceedings like the one in question as expeditious, simple, and inexpensive as possible, to accomplish the desired result, always bearing in mind, as heretofore suggested, that the consent of the people must be founded on an intelligent understanding on their part of the general purpose for which the money is to be expended."

The highways of a county, consisting of its roads and bridges, constitute and compose one system or scheme, and from the foregoing it appears plain that in submitting to the electors the question of issuing bonds for the improvement and construction of highways and bridges, there was submitted to them the question of incurring an indebtedness for a single purpose, that of improving and constructing its highways as one system, or, as the supreme court of Washington said, as "one round whole."

It should also be borne in mind that our laws do not authorize or permit a Board of County Commissioners to issue bonds and deliver them to a contractor in payment for work performed by him, but require that the bonds be sold to the person offering the highest price therefor, the proceeds derived from the sale being used for the purpose of paying the contractor for the work performed by him. In the case of *Galles v. Hill County*, decided by the Supreme Court of this state on November 5th, last, and not yet reported, it was held that the indebtedness is created, that is, that it comes into existence, when the county becomes legally liable to pay it, in whole or in part, by reason of the issuance and delivery of the bonds to the purchaser, or by entering into a binding contract with the purchaser for the issuance and delivery of the bonds.

In this instance when Meagher County sold and issued and delivered the bonds in question to the purchaser the indebtedness or liability was incurred, the total amount of the bonds sold, issued and delivered being the amount of such indebtedness or liability. When contracts are entered into under which the money derived from the sale of these bonds is to be paid out, there cannot be, in the strict meaning of the constitutional provision, the incurring of an indebtedness or liability, for the reason that the indebtedness or liability was incurred when the bonds were issued and delivered to the purchaser, the money derived from the sale of the bonds being applicable to the payment for work performed under such contracts, and for no other purpose.

I am, therefore, of the opinion that the electors of Meagher County, by authorizing the issuance of the bonds for the purpose of improving and constructing highways and bridges within that county, authorized the incurring of an indebtedness or liability for that purpose to the amount of the bonds so authorized, and that it is wholly within the discretion of

the Board of County Commissioners to determine on what particular portions of the system of highways of such county the money derived from the sale of the bonds shall be expended, and what particular amounts thereof shall be expended on the different highways composing the system, and that such Board of County Commissioners may expend in excess of \$10,000 on any one highway, or part of a highway, constituting a part of the whole system, without any further authorization from the electors, and that such action is not prohibited by Section 5 of Article XIII of the Constitution.

Respectfully,

S. C. FORD,

Attorney General.