

**Highway Projects, Included Within New County—Bonds,
Issuance For.**

Where a portion of a highway project is included within a territory of a new county, and desires to proceed with the project, it must make provision for the expense thereof from its own treasury, and cannot assume any of the obligations of the old county.

March 5, 1920.

State Highway Commission,
Helena, Montana.
Gentlemen:

I am in receipt of your letter of recent date in which you say:

Certain road projects in Montana may be affected by the creation of new counties and in order that this department might not compromise either the old or new county, we are asking an opinion from your office covering the following questions:

For example, a County has applied for Federal Aid on a road project, the Board of County Commissioners passed a resolution of appropriation for a definite sum of money for constructing the project from an authorized bond issue for general highway purposes, the money to be deposited with the State Highway Commission when the work is commenced. In the meantime, and before construction is started or before any money is deposited with the State Highway Commission, a new County is created from a portion of the County making the original application and all or a part of the proposed Federal Aid Project is embraced in the territory included within the new County.

Under the foregoing conditions, is the new County obligated by the appropriation of the Board of County Commissioners in the parent County?

May the new County legally assume a sufficient portion of the Road Bonds to meet this obligation, if any obligation exists, and use the fund created by the sale of Road Bonds for this purpose?

May the new County issue bonds to pay an obligation thus assumed.

May the parent County withhold all authorized Road Bonds for expenditure entirely within the confines of the parent county or that portion not affected by the creation of the new County?

You are advised that under such conditions the new County is not obligated by the appropriation made by the Board of County Commissioners of the parent county.

Under such conditions the new county cannot legally assume any portion of the road bonds, or use any portion of the funds derived from the sale of the road bonds by the parent county. The bonds will be issued and sold by the parent county, all of the funds derived from the sale thereof must be expended within the present boundaries of the parent county, after the creation of the new county, and the bonds will be obligation of the parent county. If bonds were issued and sold before the creation of the new county, and a portion of the funds derived from the sale of the bonds were expended in the construction and improvement of highways in that portion of the parent county, now embraced in the new county, before the creation of the new county, the same would be adusted when the indebtedness of the parent county is apportioned between the parent and the new county.

As the new county cannot assume such obligation it cannot, of course, issue any refunding bonds for such purpose.

Your last question has been fully answered in the answers to the preceding questions.

If the new county desires to proceed with the project it must furnish the money therefore either from funds in its treasury, applicable to such purpose, or by issuing and selling bonds for such purpose.

Respectfully,

S. C. FORD,

Attorney General.