

Counties—County Commissioners — Indebtedness — Expenditures.

When the Board of County Commissioners seeks to incur an indebtedness of more than \$10,000.00 and to pay the same in yearly installments of less than that sum, for a single purpose, such proposition is within the constitutional provision prohibiting an expenditure exceeding \$10,000.00 for a single purpose without a vote of the electors.

Louis E. Haven, Esq.,
County Attorney,
Hardin, Montana.

My dear Mr. Haven:

You have submitted to this office the following question:

“A county, having procured a judgment on a depository bond, on execution sells realty to satisfy the judgment; the realty sold is subject to a prior mortgage lien and the property is bid in by the county subject to this prior mortgage lien. Can the Board of County Commissioners, after having bid in the property on execution sale, legally make a contract with the mortgagee to pay off the mortgage indebtedness of approximately \$28,000 by yearly payments of from \$5,000 to \$10,000?”

I understand that the realty in question is the property now being used as a court house.

Your proposition presents the single question of whether the expenditure of from \$5,000 to \$10,000, during a series of years, aggregating a total expenditure of approximately \$28,000, would violate the provision of Section 5 of Article XIII of the Constitution, providing that: “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.”

That the expenditure of this amount of money would be for a single purpose, there can be no doubt.

Jankins v. Newman, 39 Mont. 77, 101 Pac. 625;
Morse v. Granite County, 44 Mont. 78, 119 Pac. 286.

The prohibition is against the expenditure of an amount exceeding \$10,000 without regard to whether this amount is spent during one year or during ten years, provided that it is spent for a single purpose.

In *Hoffman v. Gallatin County*, 18 Mont. 224, 44 Pac. 379, it was held that, where the county assumed to borrow \$30,000 at one time, though in loans of \$10,000, \$10,000, \$7,500 and \$2,500, and issued warrants therefor in corresponding amounts and then sought to refund the warrants with bonds without submitting the proposition to a vote of the electors, the transaction was void under the above constitutional provision, and that splitting the loan was a mere device for avoiding the prohibition.

In *Panchot v. Leet*, 50 Mont. 314, 146 Pac. 927, it was held that a county could not incur an indebtedness of \$40,000 for the construction of a county high school building without the approving vote of the electors, even though the debt was to be met by a tax levy for that purpose.

In *State ex rel. Turner v. Patch*, 64 Mont. 565, 567, the Court said:

"Stated in a somewhat more concrete form, it is the contention of relator that the commissioners cannot legally issue warrants to an amount exceeding \$10,000 in any one year in payment for the repairs, improvements, extensions and maintenance of all the roads in the county without being first duly authorized to do so by a vote of the qualified electors, but just why counsel for relator limits the right to any one year is not apparent, for, if his premise is correct, it is altogether immaterial whether the warrants are issued during one year or during several years."

In *Hefferlin v. Chambers*, 16 Mont. 349, 40 Pac. 787, the facts were very similar to those you present. The expenditures had been made at various times and it was contended that this took it without the constitutional provision. The Court, however, said:

"The only suggestion made against this view is that the indebtedness of \$3,200 and \$700 has been heretofore incurred, and that the indebtedness now proposed is only \$9,680, which, it is claimed, is within the limit, and therefore within the power of the commissioners. But such construction of the constitution would fritter away its plain intent. The constitution intended to limit the powers of the commissioners, as to an expenditure for a single purpose, to a certain figure, unless they obtained the approval of the people for such expenditure.

"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 lia-

bility 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, therefore, my opinion that the fact that an amount not exceeding \$10,000 is to be expended in any one year does not take the proposition without the constitutional provision prohibiting an expenditure exceeding \$10,000 for a single purpose without a vote of the electors.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.