

Counties—County Commissioners—Election — Indebtedness—Roads—Warrants.

The action of the electors at the election held in 1920 is sufficient authority to warrant the County Commissioners to incur a warrant indebtedness in excess of \$10,000 for road construction purposes.

Carl J. Anderson, Esq.,
Chairman Board of County Commissioners,
Glasgow, Montana.

My dear Mr. Anderson:

You have submitted to this office for my opinion the following proposition: The people of Valley county, at an election held in 1920, authorized the incurring of indebtedness of \$200,000 for road construction purposes in the county.

No bonds were issued under this authority and, subsequently, the Eighteenth Legislative Assembly enacted Chapter 21, Laws of 1923, limiting county indebtedness to 5 per cent of the percentage valuation of assessed property. This provision was recently construed by the Supreme Court of this state in the case of Heckman v. Custer County, 223 Pac. 916. In this case the Court said:

“Our conclusion is that Chapter 21, Laws of 1923, is a valid enactment, that it establishes effectually the taxable value of property as the basis upon which the limit of county bonded indebtedness is to be computed.”

It is now proposed to incur an indebtedness in excess of \$10,000 for road construction purposes in connection with Federal Aid Project No. 189, and the question presented is whether the authority given at the election, held in 1920, is sufficient to warrant the County Commissioners in expending in excess of \$10,000 on this single project. Section 5 of Art. XIII of the Constitution provides, in part, as follows:

“No county shall incur any indebtedness or liability for any single purpose to an amount exceeding \$10,000 without the approval of a majority of electors thereof, voting at an election to be provided by law.”

The election heretofore held authorizing the incurring of an indebtedness in excess of \$10,000 for road construction purposes, and, although no action has heretofore been taken to carry out the purpose of the electors, there is nothing to indicate that the authority so given has lapsed by non-use.

It is, therefore, my opinion that the action of the electors at the election held in 1920 is sufficient authority to warrant the County Commissioners to incur a warrant indebtedness in excess of \$10,000 for road construction purposes.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.