

**Bonds—Counties—County Commissioners—Indebtedness  
—Warrants.**

County Commissioners have authority to incur an indebtedness and to pay it by the issuance of a warrant of a certain amount every month over a period of ten years, where the county has reached the constitutional limit of bond indebtedness, but where the additional debt would not bring the total indebtedness of the county for all purposes up to 5% of the value of the taxable property, provided that such action is authorized by the electors.

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

My dear Mr. Haven:

You have submitted to this office the following question:

“Can the County Commissioners of Big Horn county, provided a vote of the people is favorable, buy the property mentioned in Mr. Warren’s proposition for a court house, for a price amounting to \$45,000.00 to be paid for by the issuance of county warrants monthly in the sum of \$375.00 each during a period of ten years?”

The proposition to which you refer is that one W. E. Warren offers to sell to the county of Big Horn his certificate of sale amounting to \$29,123.85, being the amount of foreclosure of a mortgage on certain property that the county heretofore had under lease and used as a county court house. It also appears that the county owns an equity in this property by virtue of an attachment on a depository bond, which was subject to Mr. Warren’s mortgage.

You state that the Commissioners are anxious to submit this matter to the people at the next election, provided it can be carried out legally.

It appears that the present indebtedness of Big Horn county is \$399,000, and that the assessed valuation is somewhat in excess of

\$19,000,000, while the outstanding warrant indebtedness is \$53,560. The county is, therefore, prohibited from issuing further bonds under Chapter 21, Session Laws of 1923, and the case of Heckman v. Custer County, 70 Mont. 84, 223 Pac. 916, which limits the amount of bonded indebtedness a county may incur to 5 per cent of the percentage of assessed value of the property upon which taxes are levied. However, your proposition does not involve the increase of the bonded debt in the amount of \$45,000 or in any other amount.

Article XIII, Section 5, of the Constitution limits the indebtedness of a county for any purpose to 5 per cent of the value of the taxable property. Five per cent of \$19,000,000 is \$950,000. An indebtedness of \$45,000, which you propose to pay by the issuance of county warrants monthly during a period of ten years, would not increase your bonded debt. The increase in the obligations of the county in that amount would be immaterial, so long as it was within the 5 per cent limit of the assessed value of the property and was approved by the electors of the county.

The certificate of sale was issued November 24, 1923, and the right of redemption will expire in November, 1924. In order to avoid any complications by a possible redemption, it would probably be the part of wisdom to submit to the people at the next election the proposition of purchasing said property, and, if the result is favorable, have Mr. Warren obtain a sheriff's deed for the property and then enter into the agreement with him as the owner rather than as the holder of the certificate of sale.

It is, therefore, my opinion that the County Commissioners are authorized to submit the proposition to the electors of the county and, if approved by a majority of the electors at the election, the entering into such a contract would not be in conflict with any constitutional provisions relating to limitation of indebtedness, nor would it violate the provisions of Chapter 21, Session Laws of 1923.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.