

**County Commissioners—State Highway Commission—
Highways—Projects—Federal Aid Projects.**

County Commissioners have no authority to divide a single project into two or more projects so that each will be below the cost of \$10,000.

Geo. W. Lanstrum, Esq.,
State Highway Commissioner,
Helena, Montana.

My dear Mr. Lanstrum:

You have submitted to this office for my opinion the following proposition:

“We have under consideration for construction with federal aid a project in Gallatin county, called Federal Aid Project No. 203, the total estimated cost of which is about \$41,000, excluding bridges, the federal aid being \$21,000 and the county’s share of the estimated cost \$20,000. On account of the provision in the Constitution which prohibits the County Commissioners from expending an amount in excess of \$10,000 for a single purpose, the County Commissioners propose to divide this project into two sections in such a way that a maximum of \$10,000 of the county money will be sufficient to construct each section. It is proposed to construct Section A of this project using \$10,000 of county money this year, and to construct Section B using another \$10,000 of county funds next year, or possibly two or three years later.

“Please advise if in your opinion the expenditure of \$10,000 of county funds on each of two adjacent sections of a highway in different years is legal under the provision of the Constitution above named.”

The constitutional provision to which you refer is found in Section 5 of Article XIII, and 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.”

This provision, particularly in connection with the construction of highways by counties, has been the subject of a number of decisions by the Attorney General (8 Op. Atty. Gen., pages 111, 279, 297 and 391).

In 8 Op. Atty Gen., page 391, which involved a proposition to create two separate projects, leaving an interval of space between the two, each costing less than \$10,000, but the cost of both being in excess of that amount, it was said:

“With reference to dividing the proposed highway into separate projects, leaving an interval of space between each project the cost of each project being less than \$10,000, would be doing indirectly just what the Board of County Commissioners is prohibited from doing directly. This whole highway must be treated and considered as one highway, and it cannot be otherwise treated or considered by attempting to divide it into several parts leaving an interval between each part. The Constitution prohibits the incurring of a liability or indebtedness for a single purpose in excess of \$10,000, without the approval of the electors being first obtained, and you cannot nullify the effect of this provision by attempting to divide a single purpose into several distinct purposes, when in fact it is but a single purpose.”

The foregoing is particularly applicable to the proposition which you submit. The work is to be done on one highway; in fact all of the highway on which work is to be done is included in the one project, but in order to avoid running counter to the constitutional provision it is proposed to divide the project into two sections, doing the work on one section this year and the work on the other section in a following year, so that when the work in both sections is completed the whole project will have been completed. As was said in the opinion quoted, “you cannot nullify the effect of this provision by attempting to divide a single purpose into several distinct purposes, when in fact it is but a single purpose.”

The fact that the work is not all to be done in one year, or to be paid for in one year, does not help the situation any. In the case of *Jenkins v. Newman*, 39 Mont. 77, 101 Pac. 625, our supreme court held that the approaches to a bridge are a part of the bridge. Suppose that a bridge, with its approaches, will cost \$11,000, the approaches costing \$2,000 and the remainder of the bridge \$9,000, and it should be proposed to construct this year the main part of the bridge, and next year the approaches, is there any question that this would be a clear and direct violation of the constitutional provision? The situation can be no different with reference to the construction or improvement of a highway when it is attempted to place the part to be constructed or improved in one project, dividing it into two sections and doing the work in one section one year and that in another section in another year.

It is, therefore, my opinion that to divide the project into two sections, doing the work in one section in one year, and that in the other section in a following year, the total cost exceeding \$10,000, as is proposed to be done by the County Commissioners of Gallatin county, will be a violation of Section 5 of Article XIII of the Constitution.

I do not believe, however, that there could be any objection if a project should be formed this year to include a portion of the highway, the cost not to exceed \$10,000, and the forming of another separate and distinct project next year, or in any following year, to include another portion of the highway, even though it should adjoin the portion of the highway included in this year's project.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.