

**Constitution — Expenditures — County Commissioners —
Counties—Court House.**

Cash on hand sufficient to erect a courthouse to cost more than \$10,000 cannot be expended for such purpose without a vote of the electors. Expenditures for \$10,000 or over for current expenses may be made, although for a single purpose, without a vote of the electors.

Walter R. Knaack, Esq.,
County Attorney,
Shelby, Montana.

July 2, 1929.

My dear Mr. Knaack:

You have requested an opinion whether the county commissioners of Toole county may expend \$125,000, cash on hand in the general fund, for the erection of a courthouse without submitting the proposition to a vote of the electors of the county.

You have called attention to the opinion of the attorney general found in Volume 11, Opinions of the Attorney General, page 290, where it was held that the commissioners could expend \$15,000 for "securing, equipping and maintaining a county fair, including the purchase of land for such purpose and the erection of such buildings and other appurtenances as may be necessary," without a vote of the electors, where such funds were raised under the provisions of Section 4539, R.C.M. 1921.

Your question involves the interpretation of the latter part of Section 5 of Article XIII of the Constitution, which reads as follows.

"No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand (\$10,000.00) dollars without the approval of a majority of the electors thereof, voting at an election to be provided by law."

That construction of this section has caused this office a great deal of difficulty is apparent from an examination of the opinions found in Volume 10, Opinions of Attorney General, pages 98, 162, 168, 240 and 299.

The word "liability" as used in this section was clearly intended to add something to the word "indebtedness" for the word "debt" is used

alone in that portion of the section dealing with the total limit of indebtedness which a county may incur.

The only question, therefore, is just what was intended by coupling "liability" with "indebtedness" in that portion of the section dealing with a single purpose. The word "liability" is generally held to include every kind of legal obligation, particularly such as are measured by money valuation. (See 36 C.J. 1050; *Woehrle vs. Canclini*, 158 Cal. 107, 109 Pac. 888).

In Volume 10, *Opinions of Attorney General*, page 168, this office held, after reviewing cases from the Montana court as well as from many other states, that where a county has reached its constitutional limit of indebtedness it may, after a levy of taxes has been made, but before the taxes have been collected, issue warrants for current expenses without incurring indebtedness.

Maintenance of the poor is just as much a single purpose as the purchase of the farm or erection of necessary buildings. The maintenance of the poor in any number of counties of the state would exceed \$10,000 many times over in a single year; so also may the expense of maintaining a piece of a single road project after construction; or the trial of a single criminal case often exceeds \$10,000; yet these are the purposes for which a county is created and expenses for such purposes are current for they continue from year to year. (*Sheldon vs. Purdy*, 17 Wash., 135-140, 49 Pac. 228; *Roach vs. Gooding*, 11 Ida., 244, 250, 81 Pac. 642).

The framers of the constitution knew when framing this provision that the current expenses for maintaining any of the county institutions for a single year might exceed \$10,000 and yet they did not intend that the administration of county business should be hampered by requiring the matter of such expenditures to be submitted to a vote of the people, even though it exceed \$10,000 in any one year, and this has been the uniform construction that has been given by the boards of county commissioners in the various counties of the state since its adoption.

In *Panchot vs. Leet*, 50 Mont. 314, the question of making an expenditure for a single purpose in excess of \$10,000 for building purposes without the express authorization of the electors, where the funds were available for such construction, was considered by the court. Mr. Justice Sanner, in delivering the opinion and in answering the contention that more than \$10,000 is expended for the maintenance of the poor in a single year without a vote of the people, said:

"* * * for it is perfectly obvious that the distribution of various amounts for the relief of various indigent persons, even though the aggregate exceed \$10,000 taken from the county poor fund, is in nowise analogous to the expenditure of a sum certain for the single purpose of erecting a public building. The first is a distribution, founded on a duty expressly imposed, to meet an ever-present condition encountered in the regular and normal functioning of the county; the second is an expenditure, founded on a liability for a single, occasional

purpose, forbidden under certain conditions. Such examples and similar arguments have, however, been advanced from time immemorial, to avoid some constitutional requirement."

"Liability," therefore, as used in this section of the constitution, was not intended to be used in its broadest sense. It does not limit an expenditure for a single purpose for ordinary current expenses but was intended to apply to other expenditures such as for the building of a road or bridge, or for any road work not of such a character as the cost of doing which would be classed as current expenses occasioned by the normal and regular functioning of the county, or for the construction of a county building. Whether the expenditure of \$15,000 authorized by the opinion referred to in the opinion of the attorney general found in Volume 11 at page 290 was for current expense is not necessary at this time to determine.

It is my opinion that the expenditure of \$125,000, cash on hand in the general fund, for the construction of a courthouse is not a current expenditure, and being in excess of \$10,000 it is required to be submitted to a vote of the electors as provided by Section 5 of Article XIII of the constitution.

Very truly yours,

L. A. FOOT,

Attorney General.