

Counties—County Commissioners—Budget Act—Certificate of Indebtedness.

The board of county commissioners may not purchase road machinery during one fiscal year and give a certificate of indebtedness bearing interest payable in a subsequent fiscal year; provisions may not be made in budget for following year for the payment of such certificate of indebtedness.

R. N. Hawkins, Esq.,
Assistant State Examiner,
Helena, Montana.

December 26, 1929.

My dear Mr. Hawkins:

You have requested my opinion on the following questions:

“1. Can a board of county commissioners purchase road machinery on December 1, 1929 for immediate delivery and issue to the selling concern a certificate of indebtedness that is due on July 15, 1930, said certificate bearing 6% interest from

date until paid, and issued by virtue of a resolution on the commissioner's minutes but without filing a lawful claim, there being nothing in the accounting records to show said transaction, and therefore the purchase having no effect upon the county budget for the current year and in fact there being no provision in the current budget for such items?

"2. If such certificates have been issued, what is their legal status as against the county, and upon whom does the liability rest?"

There is no statutory authority for a board of county commissioners to issue a certificate of indebtedness under the circumstances above outlined. Furthermore, the attempted purchase of the road machinery, if no funds therefor are provided by the current budget, would constitute a violation of the budget act.

Since the county commissioners have no authority to issue the certificate of indebtedness and the transaction described therein not being authorized by the current budget act, neither the certificate nor the transaction stated therein constitute a valid claim against the county. (Section 5, Chapter 198, Laws of 1929.) Provision may not be made in the budget for next year for this certificate nor for the liability mentioned therein as they are not such items as the law permits to be included in the budget for the following year. Only emergency warrants issued for the purposes and in the manner stated in the budget act, during the previous year, may be included in the budget for the following year.

The person taking such "certificates of indebtedness" does not acquire any present or future claim against the county by reason of its issuance or because of the transaction described therein.

Very truly yours,
L. A. FOOT,
Attorney General.