

**Counties — County Commissioners—Elections—Bridges—  
Bonds.**

County Commissioners are authorized to call a special election for the purpose of submitting to the electors the question of issuing bridge bonds in excess of \$10,000 when proper petition therefor is filed with the board.

Carl L. Brattin, Esq.,  
County Attorney,  
Sidney, Montana.

January 16, 1930.

My dear Mr. Brattin:

You have requested an opinion upon the question of whether the board of county commissioners may call an election to be held on a date other than that on which a general election is held for the purpose of submitting the question of issuing the bonds of the county in excess of \$10,000 for the construction of a bridge when a proper petition is filed requesting such action on the part of the board, or if such election must be held on the same date that a general election is held?

Omitting for the time being any consideration of legislation affecting the subject subsequent to the year 1918, to which reference will hereinafter be made, and considering the law upon the subject as it stood up to the year 1919, you are advised that Section 532, R.C.M. 1921, granted to the board of county commissioners the power to call a special election "at any time" for the purpose of submitting to the qualified electors of the county a proposition to raise money for public improvements. The provisions of Sections 4717-4722, R.C.M. 1921, relating to the power of the board of county commissioners to borrow money, also clearly indicate that such questions may be submitted at a special election called for that purpose as, for instance, it is provided by Section 4719 that such election shall be held and conducted in the manner prescribed by law in regard to the submitting of questions to the electors of a locality under the general election law, and Section 4722 provides for a separate ballot when the question is submitted "at a general or other election."

Section 4614, R.C.M. 1921, as it was prior to its amendment in 1923 and 1925 vested the power in the board of county commissioners to issue bonds for, among other things, the construction of highways and bridges. This section was formerly Section 2905 of the Revised Codes of 1907, and Section 4717, R.C.M. 1921, was formerly Section 2933 of the Revised Codes of 1907, though both were amended in 1915, in a manner not here important to consider. Both Sections 2905 and 2933 of the 1907 codes were a part of Title II of Part IV, of said codes, and therefore the borrowing of money for the purpose of building a bridge was one of the "purposes mentioned in this title" as expressed in said Section 2933. It is, therefore, apparent under Section 4614, R.C.M. 1921, that the board had the power to issue bonds for constructing bridges

in excess of \$10,000, provided, the question was first submitted to the electors of the county.

Up to the year 1919, the law had not concerned itself with petitions to the board for calling an election in matters of this sort, and the board could submit the question of issuing bonds to the electors at its own instance and without petition, as at that time there was no authority at law for filing a petition asking that the question be submitted, (*Morse vs. Granite County, et al.*, 44 Mont. 78, at page 90) and the election could be called by the board at any time and it did not need to be held on the same date that a general election was held.

In 1919 the legislature enacted Chapter 56 of the laws of that year, which was an original law upon the subject and which is now found as Section 4712, R.C.M. 1921, and it therein provided that whenever a petition signed by 10% of the resident taxpayers of the county is filed the board shall cause to be submitted to the voters of the county on the same date as is held the next general election following the filing of the petition the question of issuing bonds in a sum exceeding \$10,000 for the purpose of constructing a bridge at a designated place. The purpose of this legislation was not in any way to limit, condition or abrogate the existing power of the board to call special elections for the purpose of submitting such questions to the electors upon its own initiative without petition, for as appears from the text and the title of the act the intention was to create a new right in the electors themselves to require the board to submit the question of bonding the county for the purpose of building a bridge when the petition as required by the act was filed. The board could not, however, be required to submit the question at an election held on any other date than that on which a general election was held. There still remained unaffected by the act the power of the board of county commissioners to submit such questions on its own motion without petition and to call special elections for that purpose on dates other than those on which general elections are held.

In 1921 the legislature enacted Chapter 104, of the laws of that year, designated as Section 1252, R.C.M. 1921, by which it provided among other things that no election for the issuance of bonds by any school district, town, city, or county should be called, except upon presentation of a petition therefor, signed by at least 20 per cent of the qualified, registered electors who are taxpayers and whose names appear upon the last assessment roll for the year next preceding such election. The effect of this act was to withdraw from the board of county commissioners the previously existing power to call an election on its own motion without petition, and thereafter it could only do so upon the condition that a petition as provided by the act was filed, but when such petition was filed the board had the same power with reference to calling an election as it had before the enactment of the act, viz: to call a special election for the purpose of submitting the question and the date did not have to be the same as that on which a general election was held. The right to call a special election "at any time" as provided in Section 532, was merely made conditional upon the filing

of the petition, but when the condition had been performed the power could be exercised in the same manner as it was prior to the enactment of said Chapter 104 of the Laws of 1921.

Whatever effect this act had on Section 4712, is not here necessary to be considered. If it had the effect of repealing said section, it repealed a right of the electors and not a power of the board of county commissioners. If it was not repealed, the right of the electors still remains to have the question submitted on the date of a general election only, and the power of the board remains to call a special election at any time when a petition is filed in accordance with Section 1252, R.C.M. 1921.

In 1923 and 1925, Section 4614, above referred to, relating to the power of the board of county commissioners to issue bonds for, among other things, the construction of a bridge, was amended so that by the last amendment (Chapter 97, Laws of 1925), the board is authorized to issue bonds for building bridges and the other purposes therein mentioned, and it is specifically provided that the election at which the question must be submitted shall be held in accordance with the provisions of Section 4719-4722, R.C.M. 1921, and, as hereinbefore stated, these sections recognize the power of the board of county commissioners to submit the question of bonding the county at elections other than general elections.

It is therefore my opinion that the power of the board of county commissioners to call a special election at any time for the purpose of submitting the question of whether or not the county shall issue bonds for the construction of a bridge has been and is unaffected by any of the legislation subsequent to 1918, except that no such special election may be called unless a petition is filed as required by Section 1252, R.C.M. 1921; that when said petition is filed the board of county commissioners has the power to call a special election to be held on a date other than that on which a general election is held.

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