

Counties—County Commissioners—Debts—Discharge—Settlements.

The board of county commissioners does not have authority to accept a deed to real estate in settlement of a debt due to the county.

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Helena, Montana.

March 11, 1930.

My dear Mr. Hawkins:

You have requested my opinion whether the board of county commissioners has authority to accept a deed to land at a fixed value as part settlement of the amount due from a bondsman on a bond given the county to secure county deposits in a bank, which later went into liquidation. The facts in connection with this particular settlement are as follows:

The Flathead County State bank of Polson, Montana, wishing to become a county depository of Lake county, filed with the county its bond in the sum of \$20,000 with one A. N. Davidson as one of the bondsmen for the full amount. Later, and at a time when the county had on deposit therein, the sum of \$10,367.11, the bank decided to liquidate and at that time Mr. Davidson gave the county as additional security his promissory note for the amount of the deposit, secured by a quitclaim deed on eighty acres of land and a chattel mortgage on personal property. Later, by resolution, the board of county commissioners authorized an exchange of securities by accepting a real estate mortgage on one hundred sixty acres of land in lieu of the chattel mortgage, and still later, by resolution, the board of county commissioners authorized a settlement with Mr. Davidson by accepting a deed to the one hundred sixty acres of land covered by the mortgage, allowing the sum of \$8,000.00 therefor, and accepting promissory notes for the balance due.

There is no claim of fraud in connection with the transaction or that the entire settlement was not for the best interests of the county, the only question being whether the board of county commissioners had authority under the circumstances to make such a settlement.

It is well settled that a board of county commissioners has only such authority as has been conferred upon it by statute and there is no statute authorizing the board to accept property in payment of an

obligation due the county. Furthermore, Article V, Section 39 of our State Constitution specifically provides that "no obligation or liability of any person, association or corporation, held or owned by the State, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed, or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury." And in view of this prohibition the legislature could not grant such authority if it had so desired. I note in the statement of the examiner attached to your report that the land in question is adaptable to use as a county poor farm, and for this reason it might be contended that the transaction was simply a purchase of the land by the county commissioners and that Mr. Davidson was given credit on his obligation to the county for the purchase price of the same.

This position, however, is not tenable for the reason that paragraph 8 of Section 4465, R.C.M. 1921, as amended, provides that the county commissioners have authority "to purchase, receive by donation, or lease any real or personal property necessary for the use of the county, preserve, take care of, manage, and control the same; but no purchase of real property must be made unless the value of the same has been previously estimated by three disinterested citizens of the county appointed by the district judge for that purpose, and no more than the appraised value must be paid therefor."

For the foregoing reasons it is my opinion that the board of county commissioners had no authority to accept real estate in part settlement of the debt due the county, and since it had no authority to make such a settlement, the same is null and void.

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