

**Counties—Property—Sales—County Commissioners—Senate Bills—Constitutional Law.**

That part of senate bill 46, laws of 1929, which sought to amend subdivision 10 of section 4465 R.C.M. 1921 as theretofore amended is unconstitutional, the subject of said amendment not being expressed in the title of the bill.

In selling county property acquired by tax deeds county commissioners should follow senate bill 105 in cases where the value of the property is in excess of \$100; if under that value they should dispose of it according to subdivision 10 of section 4465 R.C.M. 1921, as amended, disregarding subdivision 10 of senate bill 46 of the twenty-first legislative assembly.

George W. Padbury, Jr., Esq.,  
County Attorney,  
Helena, Montana.

April 11, 1929.

My dear Mr. Padbury:

You state that the board of county commissioners of Lewis and Clark county contemplate selling property for which the county owns tax deeds, and you inquire concerning the manner of sale in view of the recent legislation upon the subject as contained in Senate bills 46 and 105, passed by the Twenty-first Legislative Assembly.

The title to Senate bill 46 reads as follows:

“An Act to Amend Section 4465 of the Revised Codes of Montana of 1921 as Amended by Chapter 95 of the Laws of the 18th Legislative Assembly, and as Amended by Chapter 54 of the 20th Legislative Assembly, Relating to the General and Permanent Powers of the Board of County Commissioners, by Adding to Such Powers the Further Power and Authority to Lease and Demise County Buildings, Equipment, Furniture and Fixtures, for Hospital Purposes and to Appraise the Rental Value Thereof.”

Section 4465 R.C.M. 1921 as theretofore amended contained the general and permanent powers of boards of county commissioners which were embraced in twenty-seven subdivisions of said section. The body of Senate bill No. 46 did add another subdivision to said section which gave to the board the power to lease and demise buildings, equipment, furniture and fixtures for hospital purposes as set forth in the title. This was in keeping with the express purpose as stated in the title of the bill. But the bill went further, it sought to amend Subdivision 10 of said Section 4465 making important changes therein.

Prior to this attempted amendment of Subdivision 10 the said subdivision authorized the board of county commissioners to sell at public auction real or personal property of the county not necessary in the

conduct of the county's business after thirty days' notice by publication and posting; provided that no sale of real property could be made unless the value thereof had been appraised by three appraisers, appointed by the district judge, within three months prior to the date of sale, and the purchase price obtained at the sale was required to be at least the appraised value. At least one-eighth of the purchase price was required to be paid in cash and deferred payments would not be extended for a period longer than eight years. The compensation of the appraisers was fixed at \$8.00 per day.

Said Subdivision 10 as it is contained in Senate bill 46 provides that if the property, real or personal, sought to be sold, is reasonably of a value in excess of \$100.00 the sale shall be at public auction after fifteen days' previous notice by publication and posting and the property must be appraised within three months prior to the date of the sale by three appraisers appointed by the district judge. No sale can be made for less than 90% of the appraised value, and 12% of the purchase price must be paid in cash and the deferred payments shall not extend over a period of longer than eight years. The compensation of the appraisers is fixed at \$5.00 per day. If the property is reasonably of a value less than \$100.00 the sale may be either public or private, and if public it shall be on five days' notice.

From the foregoing summary it will be observed that Senate bill 46 sought to make important changes in the powers of county commissioners relating to the sale of county property. A reference to the title to said Senate bill, as above set forth, discloses that it contains no notice whatever that the body of the bill made any such changes. The title states that the act amends said Section 4465 as theretofore amended, relating to the general and permanent powers of the board of county commissioners, in one particular manner only, viz: "By adding to such powers the further power and authority to lease and demise county buildings, equipment, furniture and fixtures for hospital purposes and to appraise the rental value thereof."

The title to a bill must conform to the provisions of Article V, Section 23, of the Constitution of Montana. This reads as follows:

"No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

As to the purpose of this provision our Supreme Court has said:

"The purposes of the clause of the constitutional mandate that the subject of a bill shall be clearly expressed in its title, have been considered and defined by this court in *State v. Mitchell*, 17 Mont. 67, 42 Pac. 100; *Jobb vs. County of Meagher*, 20 Mont. 424, 51 Pac. 1034; and the authorities cited in these cases. Briefly summarized they are: To restrict the legislature to the enactment of laws the objections of which legislators and the public as well may be advised of, to the end that any who are

interested, whether as representatives or those represented, may be intelligently watchful of the course of the pending bill. The limitation is likewise designed to prevent legislators and the people from being misled by false or deceptive titles, and to guard against fraud in legislation by way of incorporating into a law provisions concerning which neither legislators nor the public have had any intimation through the title read or published."

State vs. Anaconda Copper Min. Co., 23 Mont. 498, 59 Pac. 584;

State ex rel, Holliday vs. O'Leary, 43 Mont. 157, 115 Pac. 204.

The sufficiency of the title should be tested by the following rule:

"If a title fairly indicates the general subject of the act, is comprehensive enough in its scope reasonably to cover all the provisions thereof, and is not calculated to mislead either the legislature or the public, this is a sufficient compliance with the constitutional requirement. Generality or comprehensiveness in the title is no objection, provided the title is not misleading or deceptive and fairly directs the minds to the subject of the law in a way calculated to attract the attention truly to the matter which is proposed to be legislated upon." (Evers vs. Hudson, 36 Mont. 135, 92 Pac. 462).

The title to this bill gave no notice whatever of the matter contained in the body relating to the amendment to Subdivision 10 of Section 4465 R.C.M. 1921. The notice in the title was that certain powers were to be "added" to the powers already conferred upon the board of county commissioners by said Section 4465. There was no notice of a change in the existing powers of the board. Had the title been general, that is to say, a title which gave notice of amending Section 4465 relating to the powers of the board of county commissioners, without the limitation as to the particular manner in which the section was to be amended, in all probability it would be free from constitutional objections. But, if the title is a narrow or restricted one, designating a particular manner of amendment, the legislation under it must be confined within the limits designated, and where a special clause in the title restricts a general clause therein the body of the act must conform to the restriction contained in the title.

When the title is restrictive and confined to a special feature of the particular subject the natural inference is that other features of the same general subject are excluded. In this particular case the title stated the particular manner in which the section of the code was to be amended, that is, by adding to the existing powers of the board certain other powers relating to leasing and demising county property for hospital purposes, and this amounted to a proclamation that the bill sought to make no other amendments.

People ex rel. Corscadden vs. Howe (N.Y.) 69 N.E. 1114;

Cahill vs. Hogan (N.Y.), 73 N.E. 39;

Cooley Constitutional Limitations (8th Ed.), 310;  
State vs. Bradt (Tenn.), 53 S.W. 944;  
First Nat. Bank vs. Smith (Ala.), 117 So. 38;  
Fidelity Ins. Co. vs. S. Val. R. Co., (Va.), 9 S.E. 759.

The title therefore not only failed to clearly express the subject of the legislation as is required by the Constitution, but was in fact deceiving and misleading as to the matters legislated upon not mentioned in the title and, in my opinion, said Senate bill 46 insofar as it attempted to amend Subdivision 10 of Section 4465 R.C.M. 1921 as theretofore amended falls under the condemnation of the constitutional provision, and the cases hereinbefore cited and is unconstitutional, null and void, and did not operate to affect an amendment to said Subdivision 10 of said Section 4465.

Subdivision 10 of Section 4465 as heretofore amended is broad enough to cover the sale of property purchased by the county at tax sales, and if there were no other legislation upon the subject it would govern the sale of said property, but Senate bill 105 of the Twenty-first Legislative Assembly is special legislation upon the disposal of property purchased by the county at tax sales and its provisions must govern in relation thereto as to all such property the value of which is in excess of \$100.00. When the value is less than \$100.00 it must be disposed of according to Subdivision 10 of Section 4465 R.C.M. 1921 as amended by Chapter 95, Laws of the 18th Legislative Assembly, and by Chapter 54 of the 20th Legislative Assembly, disregarding Subdivision 10 of Senate bill 46 of the Twenty-first Legislative Assembly.

It is therefore my opinion that the board of county commissioners of Lewis and Clark county in selling real or personal property acquired by the county through tax sales should do so in conformity with the provisions of Senate bill 105 of the Twenty-first Legislative Assembly in all cases where the value of the property is in excess of \$100.00, and if under that value the property should be disposed of according to Subdivision 10 of Section 4465 R.C.M. 1921 as amended by Chapter 54, Laws of the Twentieth Legislative Assembly, disregarding Subdivision 10 of Senate bill 46 of the Twenty-first Legislative Assembly.

Very truly yours,

L. A. FOOT,

Attorney General.

By L. V. Ketter, First Assistant.