

148, Laws 1929, and their bondsmen, are liable in civil action and officials also liable in criminal action.

Expenditure of \$11,100 for three caterpillar road patrols, raises serious question of violation of Article XIII, Section 5 and Section 4447 forbidding incurring indebtedness of liability for single purpose in excess of \$10,000.00.

February 10, 1933.

You have requested my opinion on the following questions:

"1. Does the above claim (based upon the sale of three Caterpillar Auto Patrols for \$11,100) come within the provisions of section 4447 R. C. M. 1921?"

"2. Would the fact that three Caterpillars were purchased at \$3850.00 each make the transaction comply with the law?"

"3. Would the county commissioners be liable on their official bonds for the amount in excess of the \$10,000 limit?"

"4. Since the invoice is dated November 16, 1931, and the claim is filed July 27, 1932, approved August 1, 1932, and the budget for 1931-1932 did not provide for this claim, is not this in violation of the provision of chapter 148, Laws of 1929?"

"5. If this is a violation, is the claim a liability against the county?"

"6. Are the county commissioners and their bondsmen in any way financially responsible in the above transaction?"

The above mentioned transaction is for the purchase of three Caterpillar Auto Patrols with twelve foot blade, lighting equipment, canopy top, scari-fier attachment, glazed enclosed cab, front V snow plow, each costing \$3850.00, less an aggregate for three front V snow plows amounting to \$450.00, leaving a net cost of \$11,100.

We will take up the last three questions first. Based upon the statement of facts contained in your question Number 4, it is our opinion that the provisions of chapter 148, Laws of 1929, have been violated. This purchase was made subsequent to the forming of the budget for the fiscal year of 1931-1932 and therefore could not have been provided for in that budget. It is appar-

Opinion No. 73

Counties — Budget — County Commissioners—Officers—Civil and Criminal Liability — Indebtedness — Expenditures—Constitutional Law.

HELD: County commissioners and officers violating budget act, Chapter

ent from a reading of the last paragraph of section 5 of said chapter that the expenditure or liability being in excess of the budget and not provided for in the budget, the warrants although issued, are not a liability of the county and the party taking such warrants does not acquire any present or future claim against the county by reason of their issuance. Even if the budget had provided for such expenditure, the claim was not presented within the 30 day extension provided for in section 6 of said chapter and the allowance of the claim and the issuance of the warrants after the 30 day period would be a violation of section 6 of said act. It will be noted from the last paragraph of section 5 that the civil liability of the officers and their sureties is fourfold the amount of the claim or warrant.

That part of section 5 hereinbefore noted sets forth the civil liability of the officers and their bondsmen. Section 10 of said act provides for a criminal liability in the following language: "Any person violating any of the provisions of this act shall be guilty of a misdemeanor".

Your question Number 1 presents a more difficult problem.

Section 4447, R. C. M. 1921, is the same as section 5 of article XIII of the constitution, which provides: " * * *

* No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars (\$10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law".

We assume it to be a fact that the Caterpillar Auto Patrols are to be used in building roads and in maintaining them and in keeping them open for traffic during all seasons of the year and that for such purpose they will be used on the entire road system of the county as occasion requires.

In the case of State ex. rel. Turner v. Patch, 64 Mont. 565, the county of Roosevelt undertook to issue funding bonds to the amount of \$104,000 to be exchanged for warrants which had been issued for work, labor and materials furnished in the construction, repair, improvement and maintenance of public roads and bridges of the county.

The court held that this was not a violation of section 5, article XIII, of the constitution in that the warrants had not been issued for a "single purpose", which the court undertook to define on page 570, as follows:

"According to approved usage, then, the words 'single purpose' convey to the mind the idea of one object, project or proposition—a unit isolated from all others. In other words, to constitute a single purpose, the elements which enter into it must be so related that, when combined, they constitute an entity; something complete in itself, but separate and apart from other objects".

(This definition is quoted with approval in *Bennett v. Petroleum County, et al.*, 87 Mont. 436; *Herrin v. Erickson*, 90 Mont. 259.)

The court further said:

"In the light of this construction of the language employed in our Constitution, it cannot be said that the commissioners of Roosevelt County exceeded their authority in disposing of their county roadwork in the manner indicated. We do not mean to intimate that commissioners may, by making arbitrary or artificial divisions of work which manifestly constitutes but one project, and by issuing separate warrants to separate contractors for separate units thus created, evade the prohibition of the Constitution, but we do say that in no proper sense of the terms can it be held that, as applied to this roadwork, a culvert at Mondak, a cut at Froid, a fill at Culbertson, the removal of an obstruction at Poplar, the repair of a defect at Wolf Point, and the leveling of the surface at Bainville constitute one project, or that warrants severally issued for these separate pieces of work represent an indebtedness or liability for a single purpose, even though these points are all connected by the public roads of the county".

While the facts are somewhat different, we are unable to see any real distinction between the building of bridges, work and labor and road machinery when used in connection with road purposes throughout the entire road system in the county. The name

of the thing purchased is not so important as its use and its relation to the entire road system in determining the purpose. If expenditures for cuts and for culverts when spread over the entire road system are not for a single purpose, on parity of reasoning it would seem that expenditures for snow plows and patrols for the entire system might not be considered as being for a single purpose. This is a border line case, however, and we have been unable to find any decision on a similar state of facts. Being a doubtful case, we do not feel that we should take a position sanctioning such transactions prior to the determination by our Supreme Court, particularly in view of our holding herein that there is no valid claim against the county because of a violation of the budget act. Furthermore, we do not feel that we have all of the facts necessary for a final determination of this question.

In answer to your second question, it would seem that the fact that it was necessary to purchase three patrols at \$3850.00 each would be a fact indicating that they were not for a single purpose on the reasoning of the court in the case of *Turner v. Patch*, *supra*. Whether one patrol at a cost in excess of \$10,000 would be for a single purpose, it is not necessary to decide as it is a moot question. In this connection we might add that our court has held that where expenditures are made for a single purpose it would not make any difference whether the purchase was made at one time or at different times. *Hefferlin v. Chambers*, 16 Mont. 349; 40 Pac. 787; *Turner v. Patch*, *supra*; *Jenkins v. Newman*, 39 Mont. 77, 101 Pac. 625.

In view of the position we have taken in regard to the violation of the budget, we do not believe it is necessary to answer your third question. It occurs to us, however, that if the constitution and statutory limitation apply to this transaction, the seller is charged with knowledge of the limitation of the power of the commissioners and should not be permitted to recover the excess over \$10,000 from them individually.

NOTE: See: *Nelson, et al. v. Jackson, et al.*, 97 Mont. 299.