

Opinion No. 212.

**Counties—Abstract Plant, Lease of—
Lease of Chattels—County Commis-
sioners—County Court House—Clerk
and Recorder—Rental of Office Space
in County Building and Offices.**

HELD: 1. Where a county owns valuable chattels (an abstract plant) which became useless to the county, and cannot immediately be sold, it is within the power of the board of county commissioners to manage and control such property in such manner as is to the best interests of the county. Such property may be leased.

2. Though it may not be good policy to rent space in the office of the county clerk and recorder, Chapter 100, Laws of 1931, seems to leave such questions of policy to the sound discretion of the board of county commissioners.

December 16, 1935.

Mr. Dalton T. Pierson
Assistant County Attorney
Missoula, Montana

In your letter of December 11th you state the following questions:

“Question has arisen here as to whether Missoula County may lawfully lease to a private individual, an abstract plant which it owns and has operated for a period of years in connection with the Clerk and Recorder's office.

“A further question is whether, in the event it is lawful for the county to lease said plant, the County Commissioners may rent space, not otherwise in use, in the office of the Clerk and Recorder, to the party leasing the plant.”

You say substantially that the abstract plant is now of no further use to the county and you refer to the case of *State v. Abstractors' Board of Examiners*, 99 Mont. 564 and to Chapter 105, Laws of 1931. You say also that the abstract plant has a value of something like \$8,000, that

there is apparently no immediate sale for it and that the county is in danger of losing its investment unless it can derive some income from it.

You refer also to subdivision 28 of Chapter 100, Laws of 1931. If that subdivision was intended by the legislature to apply to ordinary chattels, the wording is unfortunate, because the words "lease and demise," in our opinion, are correctly used only in reference to interests in real estate (2 Bouvier's Law Dictionary (Rawle's Third Revision) 1888; Anderson's Dictionary of Law; Abbott's Law Dictionary; Strand's Judicial Dictionary; 35 C. J. 1139 et seq.; Section 15 R. C. M. 1921).

However, where a county owns valuable chattels which become useless to the county, and cannot immediately be sold, it is our opinion that it is within the power of the Board of County Commissioners to manage and control such property in such manner as is to the best interests of the county (Subdivisions 22 and 25, Chapter 100, Laws of 1931). Accordingly, in answer to your first question, we believe that under the circumstances stated in your letter the board may let the abstract plant in question upon such terms and under such conditions as in its opinion (subject to the reasonableness of its exercise of discretion) are for the best interests of the county.

In answer to your second question, we agree with you that it may not be good policy to rent space in the office of the clerk and recorder; however, subdivision 28 of Chapter 100, Laws of 1931, seems to leave such questions of policy to the sound discretion of the Board of County Commissioners and as a matter of law we see no reason why such space could not be rented if the board, in the sound exercise of its discretion, so decided. For analogy, suppose that the county, in its court house or other building used for county offices, had an entire vacant room for which it had no use whatever; would not the commissioners, by authority of subdivision 28, above mentioned, be able to rent that room? And if so, would the circumstance of the presence or absence of a partition between that room and the next room, the latter

occupied by a county office, change the law? We repeat that we do not here attempt to decide the question of policy.