

Opinion No. 217.

**County Commissioners—Highways—
Motor Patrol or Maintainer
—Budget.**

HELD: In view of the provisions of the Budget Act, an agreement to purchase a motor patrol or maintainer, to be paid for out of the next budget may be illegal.

December 26, 1935.

Mr. Halder M. Hansen
County Clerk and Recorder
Fort Benton, Montana

You have submitted the question whether the county commissioners may enter into a contract to purchase a motor patrol or maintainer for the sum of \$5,000, where the seller separately agrees as follows: "In consideration of the signing of the aforesaid agreement and the purchase of the said motor patrol, it is hereby mutually agreed between the said machinery company and the county aforesaid that in the event the said county is unable to pay the above stated balance due on said contract on June 30, 1936, the said company agrees to waive its right to take possession of said machinery for the period of thirty (30) days thereafter, and during said thirty (30) days to permit said county to comply with the provisions of its County Road Budget."

While it is not so stated, I assume from the foregoing that the present budget does not provide for the purchase of this item and that it will be necessary to budget for it next year in order to pay the balance of the purchase price after applying the proceeds of the sale of a second-hand engine amounting to \$500.

It seems to be the express purpose of the county budget law (Chapter 148, Laws of 1929) to not only limit the making of expenditures but the incurring of liabilities to the amount of the detailed appropriations as contained in the budget. Section 5 provides: "The estimates of expenditures, itemized and classified as required in Section 2 hereof, and as finally fixed and adopted by said board of county commissioners, shall con-

stitute the appropriations for the county for the fiscal year intended to be covered thereby, and the county commissioners, and every other county official, shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications, respectively; * * * .”

This section also provides that liabilities incurred in excess of the budget detailed appropriations shall not be a liability of the county but that the official shall be liable therefor personally and upon his official bond. It provides further that any county commissioner approving any claim in excess of any such budget appropriation shall forfeit to the county fourfold the amount of such claim. (See the last paragraph of said Section 5.) In view of the foregoing, I cannot advise you to sign the enclosed agreement.

Should there be an emergency requiring the purchase of this motor patrol, the commissioners may proceed as provided by Section 6 of said chapter.