

Opinion No. 343.**County Lands—County Commissioners—Easements to United States Government—Water Conservation.**

HELD: Under the facts stated the County Commissioners have power to grant easements to the United States government for dam sites for the purpose of permitting the latter to construct dams.

August 13, 1936.

Mr. Fred C. Gabriel
County Attorney
Malta, Montana

You have requested my opinion on the question whether the county may grant easements to the United States government for dam sites for the purpose of permitting the latter to construct dams. The United States government offers to furnish all labor and materials and construct the dams without cost to the county. The county will retain title to the lands on which the dams are built, and the actual value of such lands will be enhanced for the reason that the water conserved for stock watering and irrigation purposes will be of considerable value. Also, such lands will be appraised and the value of the dams added to the present valuation. These lands acquired by tax deed may be sold by the county as before, subject, however, to the easements.

This office has heretofore held in an opinion to you dated December 1, 1934, that an easement is real property, and the county commissioners are vested with power of sale thereof for a consideration just and adequate under the circumstances. The consideration for the sale of such easements is the construction of dams on county-owned lands, which will enhance the value of such property. The

county receives not only an indirect benefit in the way of employment and business for its residents (which in itself might not be adequate) but also a direct financial benefit to the land itself because of the construction of the dams and the use of the water conserved thereby. This benefit will result in making the lands not only more saleable but at a higher price.

It is therefore my opinion that the consideration is just and adequate under the circumstances, and that the board of county commissioners has the power, by virtue of Sections 4465.9, 4465.21 and 4465.24, R. C. M. 1935, to grant such easements.