

Opinion No. 46.**Elections—Special Election, Expenses
of—County Commissioners
—Budget.**

HELD: Expenses incurred incident to an election held under Chapter 24, Laws of the Extraordinary Session, 1933-34, are mandatory expenditures required by law and the county commissioners should proceed under section 6 of Chapter 148, Laws of 1929, where such expense has not been budgeted.

February 19, 1935.

Mr. George F. Higgins
County Attorney
Missoula, Montana

This will acknowledge receipt of your letter of February 1, requesting an opinion from this office concerning the payment of the costs incurred in a special election held in your county.

In your letter you state that in February, 1934, Missoula County filed an application to the proper governmental agency for a loan of sufficient money with which to construct a county jail. The application was subsequently approved by the Federal government and an election was called and held, at which the proposition was defeated by the voters. No estimate of the expense of calling and holding the election was ever placed in the budget, and the expense claims are now coming to the board for payment.

While it is true that the application for a loan was filed in the month of February, and that the 1934-35 budget was not definitely settled until August, 1934, we do not think that the

costs of such an election necessarily were an expense that could have been foreseen at the time of the adoption of the budget. We have nothing before us to show that the application had been approved prior to that time, and until the application had been approved the county commissioners would not be in a position to know whether or not it would be necessary to hold such an election.

However, we do not believe that this fact is controlling in the matter, as it is our opinion that the costs of such an election are "mandatory expenditures required by law," as provided for in Section 6 of Chapter 148, Laws of Montana, 1929. (Protest of Kansas City Southern Railway Company, 11 Pac. (2d) 500; Johnson v. Yuba County, 37 Pac. 528; Board of Commissioners of Montezuma County v. Frederick, 115 Pac. 514; Honey v. Jewell County Commissioners, 70 Pac. 333; Washington County Commissioners v. Nesbit, 53 Pac. 882; Ladd v. Holmes, 66 Pac. 714.)

The commissioners were authorized to proceed as they did by Chapter 24, Laws of the Extraordinary Session, 1933-34, which is an emergency act, and Section 7 of which provides: "All of the laws of this state governing the issuance and sale of bonds by counties, cities, towns, school districts, and other subdivisions of the state authorized to issue bonds under this Act, the levying of taxes for the payment of principal and interest thereof and the payment and redemption thereof, insofar as the same are applicable and not in conflict with any of the provisions of this Act, shall apply to and govern all bonds issued under the provisions of this Act."

See also *Shekelton v. Toole County*, 97 Mont. 213, 33 Pac. (2d) 531.

Section 5 of the same act requires the submission of such questions to the electors (see also Article XIII of Section 5 of the Constitution of the State of Montana), and it is our opinion that the lawful costs incurred incidentally thereto are "mandatory expenditures required by law" and the county commissioners should proceed under Section 6 of Chapter 148, Laws of Montana, 1929. (See also opinion rendered by this office on November 8, 1934, to Deputy County Attorney John D. Gillan of Helena).