

No. 207

COUNTY COMMISSIONERS—COURTHOUSE,
erection and furnishing of—AUDITORIUM IN
COURTHOUSE

Held: County commissioners do not have authority to erect a hall, auditorium, gymnasium or recreation room when erecting and furnishing a new courthouse.

August 18, 1941.

Mr. Hugh J. Lemire
County Attorney
Custer County
Miles City, Montana

Dear Mr. Lemire:

You have asked this office whether, under the provisions of subdivision 4 of Section 4444, Revised Codes of Montana, 1935, and Section 4465.8, Revised Codes of Montana, 1935, the Board of County Commissioners can—in furnishing and erecting a new courthouse—include therein a room which would be in the nature of a hall, auditorium, gymnasium and recreation room and, in general, a public room.

Your attention is directed to the case of Yegen v. Board of County Commissioners, 34 Mont. 79, 85 Pac. 740. That was a case wherein the Board of County Commissioners of Yellowstone County sought to erect a detention hospital under the provisions of the Code which provided: (a) that the county commissioners had power to provide for the care and maintenance of indigent sick and otherwise dependent poor and that they may erect and maintain hospitals for that purpose, and (b) that the commissioners had the power to provide necessary county buildings.

In enjoining the construction of the detention hospital, the Supreme Court said:

“However desirable it may be that they should have the power to provide separate hospitals for able-bodied and not dependent persons suffering from contagious or pestilential diseases, they are not here empowered to erect and maintain them at the expense of the taxpayer. So they may, under subdivision 6, acquire farms for the support of the dependent poor—not others. So, again, they have the power to provide necessary county buildings under subdivision 7. **But what are necessary county buildings? Manifestly such as are required for ordinary county purposes, as is indicated in these and similar provisions, as, for instance, in subdivision 9. Under this latter provision they may cause to be erected a courthouse, jail, hospital and such other buildings as may be necessary. The word ‘hospital’ evidently does not mean one or more hospitals for all classes of persons; but**

for that class of persons for whom the board may provide at the expense of the people, namely, the indigent sick. The phrase 'such other public buildings as may be necessary' has no wider meaning, nor does it enlarge the class of purposes for which these boards may erect and maintain buildings so as to include others not of the class already mentioned." (Emphasis mine.)

It is therefore my opinion, in view of the holding in the case just cited, our Supreme Court, if called upon to do so, would say the erection of a hall, auditorium, gymnasium or recreation room in a courthouse is not such a necessary county building as is required for ordinary county purposes. Such being the case, I am of the opinion that the county commissioners do not have authority to erect such rooms in the new courthouse.

Sincerely yours,

JOHN W. BONNER
Attorney General