

No. 262

COUNTY COMMISSIONERS—ABANDONED BRIDGES

Held: The county commissioners may transfer to the Indian Department an abandoned bridge to be moved by said Indian Department and reconstructed as a useful bridge of use to the people of the county, and such transaction with the Indian Department does not constitute a sale of County property within the meaning of Section 4465.9, Revised Codes of Montana, 1935.

October 8, 1941.

Mr. Bert W. Kronmiller
County Attorney
Big Horn County
Hardin, Montana

Dear Mr. Kronmiller:

Recently you wrote to this office as follows:

“Big Horn County, Montana, is the owner of a three (3) span bridge which was constructed across the Big Horn River by the county on a county road. The bridge was built approximately twenty (20) years ago, but because of the change of the course of the Big Horn River the approach and roadway leading to the bridge was destroyed by the water of the Big Horn River. This bridge has been idle and unused for a period of approximately twelve (12) years. The bridge cost Big Horn County a sum of One Hundred Fifty Thousand (\$150,000.00) Dollars to construct the same across the river. This bridge has been abandoned and is deteriorating and to dismantle the bridge would cause a considerable amount of expense to the county. The Works Progress Administration, of the Indian Department of the Crow Indian Reservation has offered the County Commissioners of Big Horn County, Montana, a proposition whereby the said W. P. A. will dismantle said bridge and deliver a part of the dismantled bridge to the county yards of Big Horn County at Hardin, Montana, and as a consideration for dismantling the entire bridge said W. P. A. offers to accept a portion of said bridge, which it intends to use, by reconstructing the said bridge at another point across

the Big Horn River approximately thirty (30) miles from its present position. However, that part of the bridge which the W. P. A. offers to accept for its services in dismantling the bridge will not be placed on any county road or on any county owned property but will be placed on property owned by the United States. Can the County Commissioners of Big Horn County convey a portion of said bridge to the Indian Department as a consideration for dismantling said bridge, provided the County Commissioners find that the value of the bridge to be conveyed is equal to the value of the services necessary for dismantling the bridge?"

Section 4465.3, Revised Codes of Montana, 1935, provides in effect counties can enter into agreements with one another or with the state or federal governments for the construction of bridges and can levy taxes therefor.

Section 4465.24 provides:

"The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government."

Surely if the county can enter into an agreement with the federal government to construct a new bridge and levy taxes therefor, then it can enter into an agreement with the Indian Department for the disposal of a worthless bridge which, if not now, may soon become a menace. It seems to me that, by virtue of the provisions of Section 4465.24, Big Horn County would have authority to enter into the contemplated agreement with the Indian Department.

It seems to me that, with the bridge in its present condition, Big Horn County is keeping it in its proprietary and not in its governmental capacity. If such is the case and if the bridge should wash down the river and damage or injure anyone, then such injured person could hold the county liable for such damages. As authority for this statement I call your attention to the case of *Jacoby v. Chouteau County*, 112 Mont. 70, 112 Pac. (2nd) 1068.

Section 7581, Revised Codes of Montana, 1935, defines a sale as a contract by which, for a pecuniary consideration, called a "price," one transfers to another an interest in property.

In the present case the contemplated transaction cannot be considered as a sale, because there is no pecuniary consideration passing from the Indian Department to Big Horn County. A sale contemplates that not only will the seller divest himself of title to the property, but he will also part with the right to use or enjoy the object sold. In the present case while Big Horn County may, strictly speaking, be conveying a paper title to two-thirds of the bridge to the Indian Department, there is no denying the fact the people of Big Horn County and the people generally will have the use and benefit of the new bridge which will be built.

It is therefore my opinion Big Horn County may transfer to the Indian Department all or any part of the now abandoned bridge for the purposes set forth in your letter, and such transaction does not constitute a sale and is therefore not governed by Section 4465.9, Revised Codes of Montana, 1935, relating to sales of county property.

Sincerely yours,

JOHN W. BONNER
Attorney General