

No. 334

COUNTIES—BRIDGES—COUNTY PROPERTY, sale of

Held: County may transfer materials in obsolete bridge to federal government without sale as required by Section 4465.9, Revised Codes of Montana, 1935, in consideration of new bridge to be constructed by federal government outside of confines of the county, which new bridge will proportionately benefit inhabitants of transferring county.

January 5, 1942.

Mr. Wilbur P. Werner
County Attorney
Glacier County
Cut Bank, Montana

Dear Mr. Werner:

You submit the following facts, pointing out the analogy of the factual situation you present to that contained in Opinion No. 252, Volume 19, Opinions of the Attorney General:

"Many years ago a bridge was constructed by Glacier County over the Two Medicine River just outside of Glacier Park, Montana. It is on what is now designated as Number 2 Highway. As you probably know, during the past year and a half there has been a new bridge constructed across the Two Medicine River just above the old bridge and, as a consequence, the old bridge is now of no use or value in its present location. The Road Department of the Blackfeet Indian Reservation has now offered to take this bridge from Glacier County and use it as a bridge across the Two Medicine River several miles below its present location.

"The facts as so far given are similar to the situation in Big Horn County. The difference arises in this point and that is that the place where the bridge is to be located by the Road Department of the Blackfeet Indian Reservation is outside of Glacier County and within the boundaries of Pondera County about one mile. It is however within the confines of the Blackfeet Indian Reservation and the bridge location will be on trust patent land or tribal land.

"Notwithstanding the fact that this bridge is placed in a county adjoining Glacier County, the construction of it there by the Indian Department will be of great value to Glacier County for the reason that it will provide for Glacier County and Cut Bank a direct route from the irrigated country northwest of Valier in Pondera County to our County. The roads leading to the bridge from either direction are Indian Department Roads and not County Roads."

You request a ruling as to the proposed transfer and specifically desire to know whether the transaction is covered by Section 4465.9 of the Revised Codes of Montana, 1935, pertaining to sale of county property.

As I view it, two factors are involved here which were not present in the former opinion. First, from additional facts submitted in your letter, the bridge appears to have a salvage value of from \$300 to \$400. Secondly, the bridge—in its new location—will not be within the confines of your county.

As I pointed out in the previous opinion, the county is now holding the bridge in its proprietary capacity, as distinct from its governmental capacity, with the attendant danger that might result in a case similar to that of *Jacoby v. Chouteau County*, 112 Mont. 70, 112 Pac. (2nd) 1068. Good business practice dictates some prompt disposition of this unused and now obsolete structure.

The whole question may be disposed of by reference to Section 4465.3 of the Revised Codes of Montana, 1935, which provides:

"The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

"To lay out, maintain, control and manage public highways, ferries and bridges, within the county, and levy such tax therefor as required by law; provided, however, that they may in the exercise of a sound discretion, jointly with other counties, lay out, maintain, control, manage and improve public highways, ferries and bridges in adjacent counties, wholly or in such part as may be agreed upon between the boards of county commissioners of the counties concerned, and levy taxes therefor as provided by law; and where joint highway or bridge construction projects are contemplated or necessary and the cooperation of another county, or other counties, or the state or federal government, or either or both, is desired for the construction of such projects they may enter into agreement for adjusted annual contributions over not to exceed six years, toward the cost of such projects, and they shall be authorized to place the same in their budget and levy taxes therefor as according to law."

From the foregoing it appears bridges may be constructed in adjacent counties. The legislative intent is thereby indicated. Where contributions made by the county are not disproportionate to the benefits received by

the inhabitants of the county, the power may be exercised. In the instant case we have a county desiring to aid and benefit its inhabitants by the transfer of materials contained in an obsolete and unused bridge to the federal government which will build a new, usable and convenient structure. Thus both additional questions raised by your inquiry are answered. The bridge is not required to be located within the confines of the county. The salvage value, if it is not adversely disproportionate to the benefits received, will constitute the county contribution and eliminate the necessity of a tax levy. For the reasons pointed out in Opinion No. 252, Volume 19, Report and Official Opinions of the Attorney General, no sale is involved and none is required.

I conclude the proposed transfer may be made. An appropriate agreement may be entered into between the county and the federal government incorporating the proposal.

Sincerely yours,

JOHN W. BONNER
Attorney General