

Opinion No. 252.

Counties—Bonds—Air Ports—
Elections, Bond.

Held: A county may sell bonds for the purpose of acquiring a site for an airport and the commissioners must determine before submitting the question of the issuance of the bonds to the taxpayers that a one mill levy on the taxable property of the county is insufficient for such purchase. County airport bonds must be issued in conformity with Sections 4630.1 to 4630.33, Revised Codes of Montana, 1935, as amended, and a petition is the initial step in the bond proceedings. Qualified, registered electors who are taxpayers and whose names appear upon the last completed assessment roll are eligible to vote on the question of the issuance of county airport bonds.

September 29, 1944.

Mr. D. W. Doyle
County Attorney
Pondera County
Conrad, Montana

Dear Mr. Doyle:

You have requested my opinion concerning the procedure to be followed in establishing an airport.

You submit the following questions:

"1. May the county sell bonds for the purpose of acquiring the site upon which the airport is to be established, and may the board of county commissioners make the determination that the one mill levy will not be sufficient for the purpose of acquiring the site and establishing the airport preliminary to the establishment of the airport.

"2. If the board of county commissioners may issue bonds for the purchase of the airport site, is it necessary for the bond issue to be initiated by a petition as provided for in Section 4630.8, Revised Codes of Montana, 1935. If a petition is not required, how are the proceedings for the issuance of the bonds and the establishment of the airport commenced.

"3. If such bond issue is authorized, who may vote at the election for the issuance of the bonds."

The answer to your first question is found in Chapter 54, Laws of 1941. Chapter 54 amends Section 5668.35, Revised Codes of Montana, 1935, which reads in part as follows:

"Counties, cities and towns in this state, may either individually or by the joint action of a county and one (1) or more of the cities and towns within its border acquire by gift, deed, purchase or condemnation, land for airport or landing field purposes . . ."

The above quoted gives the counties of the state general authority to acquire and purchase sites for airports.

Chapter 54 also amended Section 5668.38, Revised Codes of Montana, 1935, to read in part as follows:

"For the purpose of establishing, constructing, equipping, maintaining and operating airports and landing fields under the provisions of this act the county commissioners or the city or town council may each year assess and levy, in addition to the annual levy for general administrative purposes, a tax of not to exceed one (1) mill on the dollar of taxable value of the property of said county, city or town . . . **Provided that if it be found that the levy hereby authorized will be insufficient** for the purposes herein enumerated, the commissioners and councils acting are hereby authorized and empowered to contract an indebtedness on behalf of such county, city or town as the case may be, upon the credit thereof by borrowing money or issuing bonds . . ." (Emphasis mine.)

The emphasized portion indicates that the commissioners or the council must determine that the amount realized from the one mill levy is insufficient and

this should be done at the meeting providing for the submission of the question of issuing bonds to the taxpayers. The amount realized from the sale of bonds shall be used in conjunction with the amount realized from the levy.

The answer to your second question is found in Section 4630.7, Revised Codes of Montana, 1935, which requires a petition for calling a bond election in bond proceedings such as this.

Section 4 of Chapter 54, Laws of 1941, provides in part:

“. . . and no bonds may be issued for such purposes until the proposition has been submitted to the taxpayers affected thereby, and a majority vote be cast therefor.”

This does not set up a procedure for issuing bonds but merely expressly reserves the right to the taxpayers to vote on the question. This is in accord with the regular procedure for issuing bonds by a county set out in Section 4630.1 to 4630.33, Revised Codes of Montana, 1935, as amended, and in my opinion these sections control the sale of airport bonds.

Your third question is answered by Chapter 138, Laws of 1939, which provides in part:

“In all county bond elections hereafter held only qualified registered electors residing within the county, who are taxpayers upon property therein and whose names appear upon the last completed assessment roll for the state, county and school district taxes, shall have the right to vote . . .”

It is therefore my opinion:

1. A county may sell bonds for the purpose of acquiring a site for an airport and the commissioners must determine before submitting the question of the issuance of the bonds to the taxpayers that a one mill levy on the taxable property of the county is insufficient for such purchase.

2. County airport bonds must be issued in conformity with Sections 4630.1 to 4630.33, Revised Codes of Montana, 1935, as amended, and a petition is the initial step in the bond proceedings.

3. Qualified, registered electors who are taxpayers and whose names

appear upon the last completed assessment roll are eligible to vote on the question of the issuance of county airport bonds.

Sincerely yours,
R. V. BOTTOMLY
Attorney General