

State Constitution and Section  
4447, Revised Codes of Mon-  
tana, 1935.

December 29, 1945.

Mr. Oscar C. Hauge  
County Attorney  
Hill County  
Havre, Montana

Dear Mr. Hauge:

You have submitted the following question to this office for an opinion:

May Hill County purchase certain acreage known as the Beaver Creek Park at a purchase price of approximately \$27,760.44, which is suitable for public camping and public recreational purposes?

Section 4444.1, Revised Codes of Montana, 1935, as limited by Section 4444.2, Revised Codes of Montana, 1935, as further amended by Chapter 115, Laws of 1945, authorizes the county to expend not to exceed \$3,000,000 out of the general funds of the county for the purpose of acquiring and equipping such parks.

Section 4444.2, as amended, *supra*, states:

"All tracts of land acquired under this act shall be set aside and used exclusively for public camping and recreational purposes, and each park so established shall be given an appropriate name or number. No county shall be authorized to expend to exceed three thousand dollars (\$3,000.00) out of the general fund of the county for the purpose of acquiring and equipping parks as herewith provided, nor may any county thereafter expend to exceed one thousand dollars (\$1,000.000) per year out of the general fund of the county in maintenance of the same." (Emphasis mine.)

The expenditure for acquiring and equipping parks and public camping and recreational grounds is limited by this insofar as the general fund is concerned. We do not, however, find an over-all limitation as to expenditures as is found in the original Section 4444.2, Revised Codes of Montana, which stated:

"All tracts of land acquired under this act shall be set aside and used

Opinion No. 107.

Counties—Bond Issues—Elections,  
Bonds Issues—Indebtedness, Counties  
Purchases, Counties.

Held: There being no specific limitation in Section 4444.2, Revised Codes of Montana, 1935, as amended, to the total amount that may be expended for such purpose, except from the general fund, and the authority existing in the board of county commissioners to acquire by purchase lands suitable for public camping and public recreational purposes, the county may budget in the general fund for such purpose up to the sum of \$3,000.00 and may budget in a special fund up to the sum of \$7,000.00 for such purpose, the sum total of which will not exceed the limitations specified in Section 5 of Article XIII of our State Constitution and Section 4447, Revised Codes of Montana, 1935. Since the county is granted the authority to purchase and hold lands within its limits by Section 4444, Revised Codes of Montana, 1935, and granted authority to purchase and acquire lands suitable for public camping and public recreational purposes, it follows that the county has the implied power, in the sound discretion of the board of county commissioners, by resolution, to hold an election submitting to the qualified electors of their county the question of incurring such an indebtedness by a bond issue for the amount necessary for such purposes, provided that the total indebtedness of said county would not then exceed the limitations of Section 5 of Article XIII of our

exclusively for public camping and recreational purposes, and each park so established shall be given an appropriate name or number. Except as hereinafter provided, no county shall be authorized to expend to exceed two hundred fifty dollars (\$250.00) for the purpose of acquiring and equipping parks as herein provided, nor may any county thereafter expend to exceed fifty dollars (\$50.00) per year in maintenance of the same. The limitations hereinabove provided shall not apply to counties of the first, second, third, fourth and fifth classes. Any county, whatever its classification, may expend not to exceed three hundred dollars (\$300.00) per year for maintaining any park created under the terms of this act, if, at the time of such expenditure, any government civilian conservation corps camp or emergency conservation work camp, or any other camp created for recreational purposes by any federal agency, shall be established or maintained in such county."

There being no express limitation as to the total amount to be expended, except from the general fund, we therefore must find authority for expenditures of funds other than those obtained from the general fund under Section 4444.2, as amended, supra.

Section 4444, Revised Codes of Montana, 1935, authorizes and empowers the counties to purchase and hold lands within their limits. Section 4444.1 authorizes counties to acquire land for public recreational purposes. These two provisions imply authority.

Section 5 of Article XIII of our State Constitution provides as follows:

"No county shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five (5) per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county shall be void. No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thou-

sand dollars (\$10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law."

Section 4447, Revised Codes of Montana, 1935, states as follows:

"No county must become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county are void. No county must incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars without the approval of a majority of the electors thereof voting at an election to be provided by law."

It is therefore my opinion that there being no specific limitation in Section 4444.2, Revised Codes of Montana, 1935, as amended, supra, as to the total amount that may be expended for such purpose, except from the general fund, and the authority existing in the board of county commissioners to acquire by purchase lands suitable for public camping and public recreational purposes, the county may budget in the general fund for such purpose up to the sum of \$3,000.00 and may budget in a special fund up to the sum of \$7,000.00 for such purpose, the sum total of which would not exceed the limitations specified in Section 5 of Article XIII of our State Constitution and Section 4447, Revised Codes of Montana, 1935. Since the county is granted the authority to purchase and hold lands within its limits by Section 4444, Revised Codes of Montana, 1935, and granted authority to purchase and acquire lands suitable for public camping and public recreational purposes, it follows that the county has the implied power, in the sound discretion of the board of county commissioners, by resolution, to hold an election submitting to the qualified electors of their county the question of incurring such an indebtedness by a bond issue for the amount necessary for such purpose, provided that the total indebted-

ness of said county would not then exceed the limitations of Section 5 of Article XIII of our State Constitution and Section 4447, Revised Codes of Montana, 1935.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General