

## Opinion No. 201.

**Bond Issue—Sinking and Interest Funds—Court House, Bond.**

**Held: Funds realized from the sale of bonds by a county for the purpose of constructing a county building should not be placed in the bond sinking and interest fund and subsequently invested in securities.**

August 29, 1946.

Mr. H. E. Herrick  
County Attorney  
Custer County  
Miles City, Montana

Dear Mr. Herrick:

You have requested my opinion concerning the investment of the funds in the county sinking and interest fund. You advise me that the proceeds of a bond issue in the amount of \$300,000.00 for the construction of a court house have been placed in such fund because it is not now possible to construct the court house.

Section 3 of Article XIII of the Montana Constitution provides:

"All moneys borrowed by or on behalf of the state or any county, city, town, municipality or other subdivision of the state, shall be used only for the purpose specified in the law authorizing the loan."

See also Section 4613.5, Revised Codes of Montana, 1935.

This mandate of the Montana Constitution is clear and is not subject to interpretation. Any deviation from its terms would be in violation and the investment of the proceeds of a bond issue which was floated to construct a county building would constitute such a violation.

By Section 4630.27, Revised Codes of Montana, 1935, the county treasurer shall keep in his books a special and separate sinking and interest fund account. This section reads in part:

"All taxes collected for interest and principal on county bonds shall be placed to the credit of the sinking and interest fund for which the same were levied, and such fund shall not be used for any purpose other than the payment of principal and

interest on such bonds so long as any of such bonds remain outstanding." (Emphasis mine.)

It is apparent the sinking and interest fund is to be used for the servicing of the outstanding bonds of the county and not as a depository for other funds. If the proceeds of a bond issue are placed in such fund the moneys realized from the bond issue will be used to pay the bonds and not for the construction of a new court house as the limited purpose of the sinking and interest fund is the payment of interest and principal and any surplus is transferred to the general fund of the county (Section 4630.27, Revised Codes of Montana, 1935).

There is no statutory provision for the investment of the moneys realized from a bond issue until the time such moneys are needed for the purpose for which the bonds were issued. In *Lewis v. Petroleum County*, 92 Mont. 563, 17 Pac. (2d) 60, the Court said:

"The principal is well established the board of county commissioners may exercise only such powers as are expressly conferred upon it or which are necessarily implied from those expressed, and where there is a reasonable doubt as to the existence of a particular power in the board of county commissioners, it must be resolved against the board, and the power denied."

Because of the lack of power to invest such moneys or place the funds in the sinking and interest fund, it will be necessary to carry a separate item of account for such funds and use the same in the construction of the court house when materials are available. We must take the Constitution and legislative acts as we find them and in accordance with the intention thereof.

It is therefore my opinion funds realized from the sale of bonds by a county for the purpose of constructing a county building should not be placed in the bond sinking and interest fund and subsequently invested in securities.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General