

Your first question is answered by Section 4630.4, Revised Codes of Montana, 1935, which provides in part:

“. . . the board of county commissioners shall, at a regular or special meeting held within thirty (30) days thereafter, pass and adopt a resolution providing for the issuance of such bonds.”

This provision was considered in *Shekelton v. Toole County*, 97 Mont. 213, 33 Pac. (2d) 531, wherein the court found it was not a mandatory provision when considered after the date of the meeting. The court said:

“Under the authorities cited, we held that this provision of the statute should not now be declared to have been mandatory. It might, however, have been mandatory in the sense that the board could have been compelled to pass and adopt the resolution within the designated thirty days. Now that the board has acted, even out of time, such provision should fairly be viewed as directory only.”

It is reasonable to conclude the court construed the provision as mandatory insofar as it is the duty of the commissioners to provide for the sale of bonds which have been authorized, but the failure to hold the meeting within thirty days after the election will not invalidate the bonds and the statute will be construed as directory if the point is raised subsequent to the meeting.

Your second question is answered in part by Opinion No. 51, Volume 21, Report and Official Opinions of the Attorney General, wherein it was held:

“The board of county commissioners has power and authority to purchase or erect a building or buildings for use of the county in providing hospitalization for the indigent sick and infirm poor of the county, and may operate the same itself, or lease such building or buildings to an individual for such purpose. Such building or buildings, either purchased or erected, may not be used to provide hospitalization to the public generally.”

The above quoted opinion did not consider the size of the hospital which could be constructed for the county

Opinion No. 225.

County Commissioners—County Hospital—Hospital Bonds—Bonds, Hospital.

Held: The board of county commissioners does not have discretionary power in issuance of bonds authorized by qualified electors, but must issue bonds in an amount sufficient to accomplish the purpose of the bond issue. A county hospital may be constructed by a county for the care of the indigent sick and such hospital shall not be constructed in size in excess of present needs with reasonable provision for future requirements.

November 27, 1946.

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

Dear Mr. Werner:

You have requested my opinion on the following questions:

1. Is it mandatory for the board of county commissioners to issue bonds authorized by an election of the qualified voters and use the proceeds for the construction of a county hospital?

2. Has the board of county commissioners authority to issue the bonds in the full amount and build a hospital in excess of the county's need?

poor. However, our Supreme Court in *Yegen v. Board of County Commissioners*, 34 Mont. 79, 85 Pac. 740, considered the word "hospital" as used in our statutes relating to county hospitals and said:

"The word 'hospital' evidently does not mean one or more hospitals for all classes of persons; but for that class of persons for whom the board may provide at the expense of the people, namely, the indigent sick."

It is apparent the county does not have authority to construct a hospital in excess of the needs of the county in the care of the indigent sick. It would be short-sighted to construct a hospital sufficient only for the immediate needs of the county. Some latitude for future needs must be considered in the planning of a new hospital.

In 38 *American Jurisprudence* 163, the text states:

"In acquiring the holding property, a municipal corporation is not confined to immediate needs, but may make reasonable provision for future requirements." (See also: *Kingman v. Brockton*, 153 Mass. 255, 26 N. E. 998.)

In permitting the hospital to be built in anticipation of future needs, such power is not to be construed as authorizing the building to be constructed in excess of the county's present and future needs. If the hospital is constructed with extra space to take care of future needs, but the space is not immediately necessary for county use, then such space may be leased. However, any such lease must protect the county's interest which is the care of the indigent sick. The case of *Colwell v. City of Great Falls, Montana*, (Mont.) 157 Pac. (2d) 1013, construed the lease by a city of city property and said:

"It is generally conceded that a municipal corporation having erected a building in good faith for municipal or public purposes has the right, when such building is no longer used by the municipality, or when parts of it are not needed for public use, or when at intervals the whole building is not so used, and when it does not interfere with its public use, to

permit it to be used either gratuitously or for compensation for private purposes." (See: 63 A. L. R. 618, and 133 A. L. R. 1242.)

The use of public property by private individuals is limited in the above quotation to a use which does not interfere with the purpose of the building. Also, the court specified the building must be erected in good faith and in this case would mean the hospital must be constructed for the care of the indigent sick and not for the public generally.

Under the law as given to us by the legislature and the interpretations of the court, it is my opinion:

1. The board of county commissioners does not have discretionary power in the issuance of bonds authorized by the qualified electors, but must issue bonds in an amount sufficient to accomplish the purpose of the bond issue.

2. A county hospital may be constructed by a county for the care of the indigent sick, and such hospital shall not be constructed in size in excess of the present needs with reasonable provision for future requirements.

3. Space in a county hospital not necessary for the care of the indigent may be leased, provided such lease or use does not interfere in any way with the primary purpose of the building, the care of the indigent sick of the county.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General