

**Opinion No. 30.****Counties—County Commissioners—  
Budget, County—Poor Fund.**

**Held: There is no authority for the county commissioners to use an anticipated surplus in the poor fund for the purpose of constructing a county hospital.**

April 20, 1945.

Mr. H. R. Eickemeyer  
County Attorney  
Cascade County  
Great Falls, Montana

Dear Mr. Eickemeyer:

You have submitted the following question for my opinion:

"The commissioners of Cascade County expect to have a surplus of about \$30,000 in the poor fund at the end of the fiscal year. They intend to erect a hospital costing in the neighborhood of \$100,000. May the commissioners use the expected surplus in the poor fund for purposes of building and erecting a hospital for the poor?"

In considering your question, it is necessary to consider Sections 4613.1 to 4613.10, Revised Codes of Montana, 1935, as amended, which are the county budget system.

The county budget system provides the contemplated expenditures for the fiscal year shall be itemized, and Section 4613.5, Revised Codes of Montana, 1935, provides in part:

"Expenditures made, liabilities incurred, or warrants issued, in excess of any of the budget detailed appro-

priations as originally determined, or as thereafter revised by transfer, as herein provided, shall not be a liability of the county, but the official making or incurring of such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond."

From the foregoing, it would appear the county is limited in its expenditures to the detailed appropriations set out in the budget unless a transfer may be made.

The authority for transfers within the poor fund is found in Section 4613.5 as follows:

"Provided that upon a resolution adopted by the board of commissioners at a regular or special meeting, and entered upon its minutes, transfers or revisions within the general class of salaries and wages and of maintenance and support may be made, provided, that no salary shall be increased above the amount appropriated therefor."

The transfers thus permitted do not include capital outlay; and the construction of a county hospital would come within such classification.

It would also be well to note that Section 4613.2 provides in part:

"Expenditures for capital outlay shall set forth and describe each object of expenditure separately."

It would seem unlikely the construction of a new hospital is provided for and described within the present budget. As I have pointed out previously, expenditures may be made only for "budget detailed appropriations as originally determined." In other words, a county hospital under the current budget is not contemplated, described or appropriated for, and no expenditures may be made for its construction.

It might be urged that subsection (b) of Section XI of Part I of Chapter 82, Laws of 1937, as last amended by Chapter 117, Laws of 1941, alters the situation and overcomes the budget laws. The portion of subsection (b) I refer to reads:

"No part of the county poor fund, irrespective of the source of any part thereof, shall be used directly or indirectly for the erection or improvement of any county building, so long as the fund is needed for general

relief expenditures by the county, or is needed for paying the county's proportionate share of old age assistance, aid to needy dependent children, aid to needy blind, or its proportionate share of any other welfare activity that may be carried on jointly by the state and the county."

It is my opinion the above constitutes an additional protection of the funds for general relief, and does not constitute an amendment of the budget law.

Another reason for not permitting this expenditure is that Section 5, Article XII of the Constitution provides:

"No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars (\$10,000.00) without the approval of a majority of the electors thereof, voting at an election to be provided by law."

The above section of our Constitution constitutes a limitation on the powers of the county commissioners and in *Hefferlin v. Chambers et al.*, County Commissioners, 16 Mont. 349, 40 Pac. 787, our court said:

"The Constitution intended to limit the powers of commissioners as to an expenditure for a single purpose to a certain figure, unless they obtained the approval of the people for such expenditure."

The fact that there is a surplus and cash on hand will not avoid this constitutional limitation as there will be a contract liability which comes within the meaning of the prohibition.

In *Panchot v. Leet*, 50 Mont. 314, 146 Pac. 927, our court had under consideration this portion of our Constitution, and said:

"Whether the obligations to be created by the construction of the high school would or would not be an indebtedness within the meaning of the restriction upon the amount of indebtedness, the fact remains that, if the building is to be constructed a contract liability must be incurred for that purpose, and, if the funds sought by the levy are to be paid for such construction, there must be an expenditure of more than \$40,000 for that purpose. . . ."

"The Constitution still stands 'mandatory and prohibitory', and Section 5 of Article XIII is still intended to limit the power of every county, through any agency whatever, as to an expenditure for a single purpose to a certain figure, unless the approval of the people for such expenditure has been previously secured."

This was affirmed in *State ex rel. Nelson v. Board of County Commissioners*, 111 Mont. 395, 398, 399.

It is therefore my opinion county commissioners may not use an anticipated surplus in the poor fund for the purpose of constructing a county hospital.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General