

September 6, 1945.

Mr. W. M. Black
 County Attorney
 Toole County
 Shelby, Montana

Dear Mr. Black:

You have requested my opinion as to whether the county commissioners have the authority to invest the money realized from the sale of county bonds for a county hospital until such time as building materials are available.

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 subdivisions of the state, shall be used only for the purpose specified in the law authorizing the loan."

This constitutional prohibition is a specific limitation on the use of the money realized from the sale of bonds. While it might be argued that a short term loan of the funds during the period that such funds must be idle due to a lack of building material would be justified, yet such a procedure might encourage delay in the construction program and thus violate the above quoted constitutional provision.

Sections 4465.21 and 4465.24, Revised Codes of Montana, 1935, give broad powers to the board of county commissioners in the care of county property and the management of the county business. However, our Supreme Court has considered the authority and powers of a board of county commissioners, and in *Lewis v. Petroleum County*, 92 Mont. 563, 17 Pac. (2d) 60, said:

"The principle is well established that 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 that 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."

There is no express statutory authority authorizing the board of county commissioners to invest the proceeds realized from the sale of county bonds, and there is the constitutional prohibition found in Section 3 of Article XIII

Opinion No. 65.

County Commissioners—Counties—
 Bonds, investments of proceeds prohibited—Investments, sale of bonds.

Held: Funds realized by a county from the sale of bonds for construction purposes cannot be invested until such time as construction can be started. The funds in question must be invested only for the purpose for which they were borrowed.

of the Montana Constitution. The fact the money must be idle for some time does not justify interpreting the statutes so as to permit the investment. Our court in *Franzke v. Fergus County*, 76 Mont. 150, 245 Pac. 962, stated:

“The fact that the contemplated action may be in the best interest of the county is not an admissible argument. The doctrine of expediency does not enter into the construction of statutes.”

It is therefore my opinion that funds realized by a county from the sale of bonds for construction purposes cannot be invested until such time as construction can be started. The funds in question must be invested only for the purpose for which they were borrowed.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General