

Opinion No. 24

**County Commissioners—Contract For
Land Classification, Revaluation,
Submission to Voters—Levy—Budget
—Funds, Land Classification,
Revaluation.**

Held: Where the classification fund now amounts to \$6,666 and the 1947 levy will add approximately \$4,400 thereto and approximately \$4,284 from the general fund for revaluation procedure, that a contract for land classification and revaluation, in the amount of \$15,350, may be let by the board of County Commissioners without submitting the proposed expenditure to the voters, without violating Section 5, Article XIII of the Constitution of Montana, since the expenditure does not constitute an "indebtedness or liability" in excess of the constitutional limitation.

April 9, 1947

Mr. E. Gardner Brownlee
County Attorney
Ravalli County
Hamilton, Montana

Dear Mr. Brownlee:

You have presented the following facts:

A county has raised \$6,666 under the provisions of Section 2028, Revised Codes of Montana, 1935. The budget for 1947 will contain a one (1) mill levy under the same section, the anticipated revenue from the levy is \$4,400. The classification fund will, after the 1947 levy, contain \$11,066 to which it is proposed to add \$4,284 from the general fund. The total proposed expenditure for classification and revaluation is \$15,350.

The question involved is as follows:

Does a contract for the purposes of land classification and revaluation, in the amount of \$15,350, let by a board of county commissioners without approval of the voters violate Section 5, Article XIII of the Constitution of Montana?

Section 5, Article XIII provides in part:

"No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars (\$10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law."

Construing Section 2, Article XIII, which imposes a \$100,000 limitation on the state similar to the \$10,000 limit placed on the county, our Court in *Graham v. Board of Examiners*, 116 Mont. 584, 593, 155 Pac. 2d 959 stated:

"It has repeatedly been held by this court that there is no debt or liability created when there is cash on hand or revenue provided by the legislature for the biennium to meet the appropriation. *State ex rel, Rankin v. Board of Examiners*, supra; *State ex rel Toomey v. State Board of Examiners*, supra; *State ex rel Veeder v. State Board of Education*, 97 Mont. 121, 33 P. 2d 516;

State ex rel Blume v. State Board of Education, 97 Mont. 371, 34 P. 2d 515; *Willett v. State Board of Examiners*, 112 Mont. 317, 115 P. 2d 287. Other courts take the same view. *Coos County v. Oddy*, 156 Or. 546, 68 P. 2d 1064; *Veterans Welfare Board v. Riley*, 188 Cal. 607, 206 P. 631; *Bryan v. Menefee*, 21 Okl. 1, 95 P. 471; *Crick v. Rash*, 190 Ky. 820, 229 S. W. 63; *State ex rel Branch v. Leaphart*, 11 S. C. 458."

In *State ex rel Rankin v. State Board of Examiners*, 59 Mont. 557, 566, 197 Pac. 988, our court rules:

"... we have under consideration the meaning of the words 'debt or liability' and in our view the prohibition intended by these words is the creation of a debt or obligation of the state in excess of the cash on hand and revenue provided for..." and again at page 568, still speaking of Section 2, Article XIII:

"The constitutional limitation has reference to such a liability as singly or in the aggregate will obligate the state to an amount in excess of \$100,000 over and above cash on hand and revenues having a potential existence by virtue of existing revenue laws."

What has been said in the *Graham* case and the *Rankin* case about 'debt and liability', as applied to Section 2 of Article XIII seems to apply with equal force to Section 5 of Article XIII.

In the instant case, cash on hand is \$6,666, in the classification fund, leaving a balance of \$8,684 to be raised. The proposed one (1) mill levy will raise an estimated \$4,400, leaving \$4,284 to be obtained.

To itemize, there is a fund of \$6,666, cash on hand, with a potential of \$4,400 from the one (1) mill levy, or a total of \$11,066 for the purpose of classification. The debt or liability would amount to \$4,284, and would not exceed the \$10,000 limit imposed by Section 5, Article XIII.

Although the question of whether the expenditures, for classification and revaluation, is for a single purpose is thus disposed of since the constitutional limit is not reached, ex-

penditures for classification and expenditures for revaluation must be segregated because of the use of two different funds. Classification is carried on under the one (1) mill levy authorized by Section 2023, Revised Codes of Montana, 1935. Revaluation is carried on under the implied powers of the board of county commissioners, described in *State ex rel Blair v. Kuhr*, 86 Mont. 377, 382, 283 Pac. 758:

"To constitute the board of county commissioners ex-officio a county board of equalization, require it as such to adjust and equalize assessments as made by the assessor, and then deny it implied power to contract with specialists so as to enable it to obtain necessary data of character to enable it to act intelligently, would be equivalent to a complete nullification of the power expressly conferred . . ."

"We are of the opinion that the board of county commissioners was possessed of authority to enter into the contract in question . . ."

The expenses for revaluation are paid from the general fund, under the above principle.

Thus, the funds have two separate sources. For classification, the specific levy authorized, provides money. For revaluation, the general fund supplies money. Since the funds come from the different sources, they must be kept separate and apart.

It should be remembered that the budgetary provisions are to be complied with in planning the expenditure of the funds for classifications and revaluation.

In Volume 8, Opinions of the Attorney General, page 149, (1919) the question of a contract in excess of \$10,000 for classification was discussed, and the expenditure approved without submission to the voters.

It is my opinion, under the facts here involved, where the classification fund now amounts to \$6,666 and the 1947 levy will add approximately \$4,400 thereto and approximately \$4,284 from the general fund for revaluation procedure, that a contract for land classification and revaluation, in the amount of \$15,350, may be let

by the board of county commissioners without submitting the proposed expenditure to the voters, without violating Section 5, Article XIII of the Constitution of Montana, since the expenditure does not constitute an "indebtedness or liability" in excess of the constitutional limitation.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General