

Opinion No. 8**Purchase of Road Equipment By County Commissioners—Constitutional Prohibition On Expenditures—Budget Act—Emergency Expenditure.**

Held: That the purchase by the Board of County Commissioners of a road grader, together with accessories thereto, which will cost more than ten thousand (\$10,000.00) dollars, does not violate Article XIII, Section 5 of the Constitution of the State of Montana. Such a purchase, although not provided for in the fiscal budget, may be purchased under the emergency provision of the Budget Act, when in fact such emergency does exist.

February 23, 1949.

Mr. Melvin E. Magnuson
County Attorney
Helena, Montana

Dear Sir:

You have requested an opinion of this office upon the following questions concerning the purchase of road equipment by the County Commissioners.

(1) May the County Commissioners purchase a basic grader unit, which costs less than ten thousand (\$10,000.00) dollars, and thereafter add accessories, the total cost of which basic unit and accessories would exceed ten thousand (\$10,000.00) dollars, without violating Article XIII, Section 5 of the Constitution of the State of Montana?

(2) May the County Commissioners purchase a complete grader unit complete with all accessories, which would cost in excess of ten thousand (\$10,000.00) dollars, to be used on all County roads for their maintenance, upkeep, and repair, without violating Article XIII, Section 5 of the Constitution of the State of Montana?

(3) Assuming that the expenditure referred to in question (2) is not violative of Article XIII, Section 5 of the Montana Constitution, even though in excess of the sum of ten thousand dollars (\$10,000.00), would such a purchase be in violation of the budget law, where there is no provision in the year 1948-1949 budget for such an expenditure?

(4) Assuming that such a purchase as is referred to in question (2) above is not in violation of Article XIII, Section 5 of the Montana Constitution, may it be accomplished by resorting to the adoption of an emergency resolution by the County Commissioners and the creation of an emergency budget?

(5) Assuming that the purchase referred to in question (2) is violative of Article XIII, Section 5 of the Montana Constitution, may the County Commissioners legally obtain the use of and ultimately acquire title to the road grader with all accessories by leasing the same under an arrangement whereby the Commissioners pay a rental until such time as the total amount of rental equals the purchase price of the complete unit, at which time the last rental payment constitutes the exercise of an option to purchase, thereby vesting title to such equipment in the County?

In order to determine the correct answer to questions (1) and (2), it becomes necessary to construe the meaning of Article XIII, Section 5 of the Constitution of the State of Montana. That part of the section pertinent to the two questions reads as follows:

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

The controlling phrase in this section is, "**single purpose**". The Supreme Court has definitely determined what is meant by this phrase and in the case of *Nelson et al. v. Jackson et al.*, 33 Pac. 2d 822, 97 Mont. 299 at page 302 and 303, the Supreme Court held:

"The words 'single purpose' employed in this Constitutional prohibition have specific reference to one object, project, or proposition—a unit isolated from all others. In other words, to constitute a single purpose, the elements which enter into it must be so related that, when combined, they constitute an entity; something complete in itself, but separate and apart from other objects."

The Supreme Court also held: (See *Nelson v. Jackson*, *Supra*)

"Since the repair and maintenance of the roads of a county do not constitute a single purpose within the meaning of the Constitutional provision, (State ex rel. Turner v. Patch, 64 Mont. 565; 210 Pac. 748), the purchase of machinery for use upon all the roads of a county in repairing and maintaining them is not the expenditure of funds for a single purpose."

It is my opinion that road equipment purchased for the use on all County roads is not a "single purpose," within the meaning of Article XIII, Section 5.

In the light of the above authority, the County Commissioners could purchase this equipment in either manner as suggested in questions (1) and (2).

This brings us to question (3), which presents the question as to whether or not the County Commissioners have the power to purchase road equipment, where there is no provision in the 1948-1949 budget.

Section 4613.5, Revised Codes of Montana, 1935, provides as follows:

"The estimate of expenditures, itemized and classified as required in Section 4613.2 and as finally fixed and adopted by said Board of County Commissioners, shall constitute the appropriations for the County for the fiscal year intended to be covered thereby, and the County Commissioners, and every other County official, shall be limited in the making of expenditures or incurring of liabilities to the amount of each detailed appropriation and classification, respectively;"

"Expenditures made, **liabilities incurred or warrants issued, in excess of any of the budget** detailed appropriations 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 such expenditure of issuing such warrants shall be liable therefor upon his official bond." (emphasis supplied).

In my opinion, the provisions of the budget act are clearly mandatory and the spirit of the Act was to prohibit an expenditure, except that provided for by the budget. Therefore, the purchase of road equipment by the County Commissioners, there being no provision in the Budget Act for such an expenditure, would not be legal.

Question (4) raises the question as to whether or not the expenditure, as contemplated by the County Commissioners could be made under Emergency Purchase Provision of the County Budget Law.

Section 4615.6, Revised Codes of Montana, 1935, as amended by Chapter 170, Session Laws of 1943, and as amended by Chapter 69, Section 4, Session Laws of 1945, is controlling and answers this question.

The above section in effect provides that in a public emergency, which could not reasonably have been foreseen at the time of making

the budget, the County Commissioners may declare such emergency. The statute further provides the procedure the County Commissioners must follow in order to expend County funds for such an emergency. This statute also provides for a different procedure in the event that the emergency is caused by fire, flood, explosion, storm, etc. In that event, the County Commissioners may then adopt a more simple procedure and make the expenditure and incur the liabilities necessary to meet such emergency.

In my opinion, under the set of facts as presented by you, this purchase could come under the Emergency provision of the Budget Law. However, it must be kept in mind that whether or not an emergency exists is a question of fact and discretion is left to the County Commissioners to determine whether or not they wish to make the above purchase under this emergency section.

Your fifth and final question is whether or not the County Commissioners may enter into a lease or purchase agreement, thus avoiding the prohibitions of Article XIII, Section 5 of the Montana Constitution.

Referring to my opinion on questions (1) and (2), the purchase of this road equipment does not violate the Constitutional provision and it therefore would not be necessary for the County Commissioners to use such a method, as is suggested in question (5). After having answered your interrogatory number (2) in the affirmative, it is apparent that the answer to your interrogatory number (5) is unnecessary and will serve no constructive purpose.

However, assuming but not admitting that the purchase referred to in question number (2) is violative of Article XIII, Section 5 of the Montana Constitution, then it, of necessity, follows that the method of purchase outlined and enumerated in question (5) would also be violative of Article XIII, Section 5. It is a cardinal principal of law that you can not do indirectly what the law prohibits doing directly.

Nevertheless, based on the facts and ignoring the false assumption above referred to, I am of the opinion that Article XIII, Section 5, does not prohibit the County Commissioners from acquiring title to the road grader with all accessories by leasing and paying the purchase price in rentals to the full extent of the purchase price. The method of purchase is left to the sound discretion of the County Commissioners, and the economic advantages or disadvantages of acquiring title in this manner is one for the County Commissioners to decide.

Therefore, it is my conclusion that:

(1) The County Commissioners may purchase the road equipment by the procedure as indicated in questions (1) and (2) without violating the prohibition in Article XIII, Section 5 of the Montana Constitution.

(2) A purchase made by the Board of County Commissioners would be in violation of the Budget Act unless there is a provision in the 1948-1949 County Budget for such expenditure, except in case of an emergency.

(3) The purchase may be made, if it does not violate the Constitutional prohibition, under the emergency clause of the Budget Act, if, in fact, such emergency actually exists.

(4) That the purchase of a road grader by the County Commissioners, under an agreement whereby they lease the grader and pay the purchase price in rentals, is not violative of Article XIII, Section 5 of the Montana Constitution, inasmuch as a cash purchase of the road grader would not violate the above-mentioned section of the Constitution of the State of Montana.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.