

Dear Mr. Popham:

You requested my opinion concerning the authority of the board of county commissioners of your county to use the proceeds of a bond issue for the purpose of purchasing a hospital owned by Northern Pacific Beneficial Association which the Association has offered to sell to the county. The question submitted to the electorate was whether or not the Board of County Commissioners of Dawson County shall be authorized to issue, negotiate and sell coupon bonds for the purpose of erecting and equipping a thirty-bed hospital at a cost to Dawson County of \$300,000.

Section 3 of Article XIII of the Montana Constitution, reads as follows:

"All moneys borrowed by or on behalf of the state or any county, city, town, municipality or other subdivision of the state, shall be used only for the purpose specified in the law authorizing the loan."

This provision makes it the duty of any legal subdivision of the state to use the proceeds of a bond issue only for the purpose or purposes authorized by the electorate. Section 16-2036, R.C.M., 1947, provides in part as follows:

". . . All moneys arising from the sale of such bonds shall be paid to the county treasurer and shall be immediately available for the purpose or purposes for which the bonds were issued and for no other purpose."

The above quoted provisions of our law are clear and without ambiguity. However, there is no specific statute which defines what constitutes a change of purpose in violation of these provisions. A recent case, *Schmiedeskamp vs. Board of Trustees of School District No. 24, Mont.*, 278 Pac. (2d) 584, 12 St. Rep. 1, states that an election authorizing the issuance of bonds is final and conclusive against dissatisfied electors petitioning for a second election. While this is not directly in point on the question submitted by you, yet it establishes the principle that the will of the voters must be carried out when they have au-

**Opinion No. 16**

**Counties—County Hospitals—Bonds,  
Change of Purpose**

HELD: If the qualified electors approve the issuance of bonds for the purpose of erecting a county hospital, the board of county commissioners does not have the authority to use the funds realized from the issuance of the bonds for the purpose of purchasing a hospital already constructed.

May 31, 1955.

Mr. E. W. Popham  
County Attorney  
Dawson County  
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thorized the issuance of bonds for a specific purpose.

Under Sections 16-1008, 16-1008A and 16-2008, R.C.M., 1947, bonds may be issued for the purpose of erecting county hospitals, and under Section 16-1007, R.C.M., 1947, the commissioners have the power to acquire buildings for authorized county purposes. As the proposition submitted to the voters was to erect a county hospital, it is apparent that the purchase of a hospital already constructed would be a variance from the power granted by the majority vote. In *Lewis vs. Petroleum County*, 92 Mont. 563, 17 Pac. (2d) 60, it was said by our Supreme Court:

"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 . . ."

From the above quoted it must be concluded that the power of the board of county commissioners is very limited and where, as here, there is a direct expression as to the use of the funds realized from the bond sale, there is doubt that the commissioners could alter or change the purpose for which the money could be used. In *Nichols vs. School District No. 3*, 87 Mont. 181, 287 Pac. 624, the proposition submitted in a school bond election was for the purpose of erecting a high school building. As the acquisition of a site was not included in the purpose the court held that the bond funds could not be used for such a purpose.

"At the bond election held in defendant district the only question submitted to the electors was whether bonds in the sum of \$120,000 should be issued for the purpose of erecting a high-school building in the district, although the right to acquire a site might properly have been submitted as a part of the same proposition (subd. (a), sec. 1, Chap. 147, Laws 1927), and having failed to do so

it cannot be said that the authorization to issue bonds for the only purpose submitted by the question, carried with it the implied authority to purchase and locate a site for the building."

This case recognizes the principle that in Montana bond funds must be expended in strict conformity with the stated purpose of the issue. In a recent South Dakota case, *State of South Dakota, ex rel. Theo Jacobsen vs. Hansen, et al.*, 68 N.W. (2d) 480, it was held that the question of issuing bonds "for the purpose of procuring, establishing and maintaining" a county hospital limited the powers of the commissioners to the erection of a new hospital and not the purchase of a hospital already constructed. While this case was principally concerned in the interpretation of South Dakota statutes yet it recognized the limited construction which must be placed on bond statutes. The court said in this connection:

" . . . The grant of power to issue bonds for specified purposes excludes the possibility of an implication of power to issue bonds for other purposes, although the county or other governmental subdivisions may have power to effect such other purpose . . ."

It is therefore my opinion that if the qualified electors approve the issuance of bonds for the purpose of erecting a county hospital, the board of county commissioners does not have the authority to use the funds realized from the issuance of the bonds for the purpose of purchasing a hospital already constructed.

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