

Opinion No. 40

**Hospital Districts—Public Corporations—Powers of Public Corporations
—Hospital District's Powers to Issue Bonds, Securities or Other
Obligations—Counties—County Budget Act—Accumulation of
Proceeds of Annual Levy—County Budget Act Applicable to
Hospital Districts**

- Held:**
1. A public hospital district as a creature of statute has only such power and authority as is expressly conferred upon it by statute and such as is necessarily implied in the exercise of those conferred.
 2. The power and authority to issue bonds, securities or other obligations does not exist in a public hospital district by implication.
 3. The power and authority to issue bonds, securities or obligations in the form of promissory notes or mortgages is withheld from a public hospital district.
 4. Section 16-1901, RCM, 1947, et seq., known as the county budget act, applies to the annual budget submitted by a public hospital district.
 5. Under the provisions of Section 16-1904, RCM, 1947, a public hospital district is not permitted to accumulate funds acquired through the annual mill levy.

December 19, 1957

Mr. Larry Persson
County Attorney
Roosevelt County
Wolf Point, Montana

Dear Mr. Persson:

You have written me requesting my opinion regarding the method by which a hospital district, organized under the provisions of Section 16-4301, RCM, 1947, et seq., can finance the construction of new or additional hospital facilities.

The questions which you have presented are as follows:

1. Is it possible for a hospital district, through its board of trustees or otherwise, to issue bonds for the purposes of financing the construction of new or additional hospital facilities?
2. If the answer to the first question is "Yes", then to what extent may the district become bonded as to a percentage limitation?
3. If the answer to the first question is "No", then may such funds as are acquired by the district from its authorized levy be allowed to accumulate from year to year and new or additional facilities be provided at such time as the accumulation is large enough to support the cost of such facilities?

4. If the answers to questions number "1" and "3" are "No", may the trustees execute a mortgage and promissory note and obligate the district under the mortgage for repayment of funds which were advanced to the hospital district for the purpose of financing new or additional hospital facilities?

Public hospital districts were authorized to provide public hospitals and hospital service to the residents of the district. Section 16-4301, RCM, 1947. For the purpose of financing the operation of the district the county commissioners of the county in which the district is located are authorized to levy a tax not to exceed three mills on each dollar of taxable valuation of the property within the district. Section 16-4309, RCM, 1947. Upon formation, the hospital district is vested with certain powers, including the power to hold title to property and perform such acts as are necessary to carry out the purpose of the act. Section 16-4308, RCM, 1947.

There is no provision in the act for financing the operation of the hospital district in any other manner than that provided in Section 16-4309, *supra*. It is well settled that a public corporation, being a creature of statute, has only such power and authority as is expressly conferred upon it by statute and such as is necessarily implied in the exercise of those conferred. *McNair v. School District No. 1*, 87 Mont. 423, 288 Pac. 188; *Dietrich v. City of Deer Lodge*, 124 Mont. 8, 218 Pac. (2d) 708; *Hall v. Hood River Irrigation District*, 57 Or. 69, 110 Pac. 405; *Spray et al., v. Members of the Board of Supervisors of Pinal County*, 71 Ariz. 60, 223 Pac. (2d) 808.

It appears equally well settled that the power to issue bonds, securities or other obligations of the public corporation is not a power that can exist by implication. *Dietrich v. City of Deer Lodge*, *supra*; *Eaton v. Town of Sidney*, 211 Iowa 986, 231 N.W. 475, 477; *School District No. 6, Chase County v. Robb*, 150 Kan. 402, 93 Pac. (2d) 905; 43 Am. Jur. 298 "Public Securities and Obligations," Section 37.

Under the above stated rules and the authorities cited, the power to issue bonds or securities, not being expressly given, has been withheld from a public hospital district organized under the provisions of Section 16-4301, RCM, 1947, *et seq.* The same rule obtains in the instance when the obligation takes the form of a promissory note or mortgage. See, 43 Am. Jur. 308, "Public Securities and Obligations," Section 50.

The remaining question is whether funds acquired through the mill levy provided by Section 16-4309, *supra*, may be allowed to accumulate from year to year until such time as there is a sufficient amount to acquire new or additional facilities.

The answer to this question will turn upon whether the provisions of the county budget act, Section 16-1901, RCM, 1947, *et seq.*, are applicable to the financing of the public hospital district.

Subsection 3 of Section 16-1904, RCM, 1947, provides in part:

"(3) The board shall then determine and fix the amount to be raised for each fund by tax levy by adding together the cash balance in the fund at the close of the fiscal year immediately preceeding and the amount of the estimated revenues, if any to accrue thereto during the current fiscal year, as before ascertained and determined, and then deducting the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined and fixed by said board, the amount remaining being the amount necessary to be raised for the fund by tax levy during the current fiscal year; . . ."

It will be observed that if the above quoted statute applies to the funds of the public hospital district the cash balance in such fund at the close of the fiscal year would be deducted from the amount certified to the county commissioners as the sum necessary and proper for the ensuing year. The practical result of this would prevent any accumulation of funds from the annual levy.

An examination of Section 16-4309, RCM, 1947, indicates that Section 16-1904, supra, is applicable to a public hospital district. Section 16-4309, supra, provides:

"The board of hospital trustees shall, annually, present their budget to the board of county commissioners at the regular budget meetings as prescribed by law, and therewith certify the amount of money necessary and proper for the ensuing year. The board of county commissioners must, annually, at the time of levying county taxes, fix and levy a tax, in mills, upon all property within said hospital district clearly sufficient to raise the amount certified by the board of hospital trustees. The tax so levied shall not in any year exceed three (3) mills on each dollar of taxable valuation of property within said district."

The language to the effect that the trustees shall certify the "amount of money necessary and proper for the ensuing year" to the county commissioners at their regular budget meeting is indicative of the intent of the legislature to treat the hospital district budget in the same manner as budgets submitted by other "offices, departments, services or institutions of the county." Section 16-1901, RCM, 1947. To interpret Section 16-4309, supra, otherwise would render the phrase "amount of money necessary and proper for the ensuing year" meaningless; and, in effect, denominate the prescribed three mill annual levy a minimum as well as a maximum levy. There is no indication that the legislature so intended.

It is therefore my opinion that:

1. A public hospital district as a creature of statute has only such power and authority as is expressly conferred upon it by statute and such as is necessarily implied in the exercise of those conferred;

2. The power and authority to issue bonds, securities or other obligations does not exist in a public hospital district by implication;

3. The power and authority to issue bonds, securities or obligations in the form of promissory notes or mortgages is withheld from a public hospital district;

4. Section 16-1901, RCM, 1947, et seq., the county budget act, applies to the annual budget submitted by the public hospital district;

5. Under the provisions of Section 16-1904, RCM, 1947, a public hospital district is not permitted to accumulate funds acquired through the annual mill levy.

Very truly yours,
FORREST H. ANDERSON
Attorney General