

**Opinion No. 92**

**Counties—Cooperatives—County as Member in a Cooperative Through  
Commodity Purchases—Constitutional Law**

**Held: A county by making purchases from a cooperative of oil and  
gasoline, and receiving patronage dividends as a "member"**

**of the cooperative does not lend its credit or become a "shareholder" within the meaning of Section 1, Article XIII of the Montana Constitution.**

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December 29, 1958

Mr. V. G. Koch  
County Attorney  
Richland County  
Sidney, Montana

Dear Mr. Koch:

You have submitted the following for my opinion:

"In previous years Richland County has purchased gasoline and other petroleum products from the Farmers Union Oil Company of this city and through such purchases has acquired patronage dividends in an amount approximating \$2500.00. The county has expressed desire to continue accepting bids from this oil company and is also desirous of receiving the \$2500.00 which it can receive either in cash for a portion thereof or as an offset to future bids.

"Since purchases with this company automatically create and establish the purchaser as a member and entitled it to patronage dividends as declared by the company, it was thought that dealings would fall within the following constitutional prohibition.

"Article XIII, Section 1. Neither the state nor any county, city, town, municipality nor other subdivision of the state shall ever give or loan its credit in aid of or make any donation or grant by subsidy or other wise . . . or become a subscriber to or a shareholder in any company or corporation or a joint owner with any person, company or corporation except as to such ownership as may accrue to the state by operation or provision of law."

The question is whether Richland County by making purchases from the Farmers Union Oil Company and receiving patronage dividends as a "member" of this cooperative has "become a subscriber to or a shareholder in (a) company or corporation" within the meaning of Sec. 1, Art. XIII, supra.

It is my opinion that in such case the County is not a "shareholder" within the meaning of Sec. 1, Art. XIII, supra; and that Section 1, Article XIII of the Montana Constitution is not applicable to such a situation. Not by the widest stretch of imagination can it be said that the action of the county constitutes a giving or loaning of the credit of the county to an individual or association in the sense that the provision is intended to operate. (Compare *Barbour vs. State Board of Education*, 92 Mont. 321, 327, 13 Pac. (2d) 225.)

The history and purpose of Sec. 1, Art. XIII, *supra*, can be readily ascertained by reference to the many Montana cases which have dealt with this subject. In *Thaanum vs. Bynum Irrigation District*, 72 Mont. 221, 227, 232 Pac. 528, it was said:

"A like provision is found in the Constitution of nearly every state in the Union, and the reason for its presence is not difficult to discover. It represents the reaction of public opinion to the orgies of extravagant dissipation of public funds by counties, townships, cities and towns in the aid of construction of railways, canals and other like undertakings during the half-century preceding 1880, **and it was designed primarily to prevent the use of public funds raised by general taxation in aid of enterprises apparently devoted to quasi-public purposes, but actually engaged in private business.**" (Emphasis supplied.)

See also, *State vs. Holmes*, 100 Mont. 256, 288, 47 Pac. (2d) 624.

It is clear from this statement of the Supreme Court that this constitutional provision was intended to prohibit the giving or lending of credit or public money to a private enterprise either through some form of loan or by becoming a subscriber to or a shareholder in such an enterprise.

In the case of *Miller vs. Johnson, County Auditor*, 48 Pac. (2d) 956, substantially the same question was raised. In the *Miller* case the County was attempting to purchase insurance in a mutual fire insurance company. The plaintiff asked for an injunction upon the ground that by purchasing insurance in a mutual company the county became a "stockholder" in the corporation in violation of Article XII, Section 13, of the California Constitution.

In denying the injunction the Supreme Court of California held that the constitutional restriction had no application in that:

"The mutual fire insurance company issues no stock, and the position of a member is not analogous to that of a stockholder in a private corporation."

As to the pledging of credit, the California Court said:

"The lending of credit, if any, is by the insurance company to the public body; and neither the letter nor the spirit of the Constitution is violated by the transaction."

See also, 18 Opinions of the Attorney General, No. 261. Mont. (1938-1940.)

Controlling this question, in my opinion, is the case of *McMahon vs. Cooney*, 95 Mont. 138, 141, 25 Pac. (2d) 131. In the *McMahon* case an injunction was sought to restrain the board of examiners from purchasing certain fire insurance policies on various state buildings. One of the grounds upon which it was urged the injunction should issue was that several of the policies had been written in mutual com-

panies and that by purchasing the policies the state would become a stockholder or shareholder in a private enterprise. In response to this argument the Supreme Court at page 141 of 95 Mont. said:

"Plaintiff asserts that, by accepting these policies of insurance in mutual companies, the credit of the state is thereby loaned in violation of Section 1, Article XIII of our Constitution, which provides: 'Neither the state, nor any county . . . shall ever give or loan its credit in aid of . . . any individual . . . or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation . . . of law.'

"Where, as here, the mutual insurance company has entered into a contract of insurance for a definite and certain premium, no contingent or additional liability being created, the credit of the state is not thereby given or loaned to the mutual companies, and this constitutional provision is not violated."

Such is the instant case. By purchasing from the cooperative the county is receiving a quid pro quo for the tax monies expended. There exists no contingent or additional liability and no part of the credit of the county is pledged. Unquestionably the provisions of Section 1, Article XIII, supra, have no application.

It is therefore, my opinion that: Richland County by making purchases from the Farmers Union Oil Company and receiving patronage dividends as a "member" of this cooperative does not lend its credit or become a "shareholder" within the meaning of Section 1, Article XIII of the Montana Constitution.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General