

## VOLUME NO. 36

## Opinion No. 101

**COUNTIES — lease of hospital facilities; HOSPITALS — county lease limited; Sections 16-1032, 16-1045 R.C.M.**

**HELD: A county may not lease its hospital facilities for a term over five (5) years, pursuant to section 16-1032 R.C.M. 1947.**

September 29, 1976

Theodore P. Cowan, Deputy  
County Attorney's Office  
224 West Broadway  
Lewistown, Montana 59457

Dear Mr. Cowan:

You recently requested my opinion as to whether Fergus County may lease its hospital facilities for a term of 40 years.

It is my understanding that Fergus County is presently constructing a hospital with funds derived from a bond issue. These bonds were issued for a forty (40) year period. After construction the county had planned to lease the hospital to a non-profit corporation.

Section 16-1032 R.C.M. 1947 is pertinent to this discussion and reads as follows:

The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law; to lease and demise county buildings, equipment, furniture and fixtures, for hospital purposes, with full power of lessor except as hereinafter limited, upon such terms and conditions as the board shall decide upon. The rentals received under such lease or leases shall be paid into the general fund of the county.

No such lease or demise shall be made for a longer period than five years, nor shall said board enter into a contract of lease without and until first having advertised in a newspaper published in the county at least once a week for five weeks and that the said buildings and equipment are for lease for hospital purposes.

Section 16-1045 R.C.M. 1947 authorizes counties to borrow money and issue bonds to construct hospitals. Section 16-1045, *supra*, reads in pertinent part as follows:

(2) The bonds may be issued by resolution or resolutions of the county governing body without an election, and without any limitations of amount except as follows:

(b) The county shall be obligated to take all action necessary and possible to impose, maintain and collect rates, charges, rentals and taxes, if any are pledged, sufficient to make the revenues from the pledged source or sources in such year at least equal to the amount of such principal and interest due in that year.

- (3) Bonds issued by a county pursuant to the provisions of this act are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of section 84-4905 (2) (a). The bonds may be for a forty (40) year period.

Section 16-1045, *supra*, grants counties the power to borrow money and issue bonds to construct hospitals. Section 16-1032, *supra*, allows counties to lease the hospitals, but restricts the term of the lease to not longer than five years. It is accepted that counties only have such powers as are conferred upon them by the legislative enactment. **Yellowstone Packing & Provisions Co. v. Hays**, 83 Mont. 1, 268 P.555 (1928). Further, where the legislature has prescribed with particularity the essential steps necessary to be taken by a county in the exercise of a power granted, the statute must be held to exclude any other mode of procedure, under the doctrine *expressio unius est exclusio alterius*. **Franzke v. Fergus County**, 76 Mont. 150, 153, 245 P.962 (1926). In this instance the legislature has specifically provided that counties can lease their hospital facilities, but has limited the term of the lease to five years.

Since both sections 16-1032 and 16-1045, *supra*, relate to the same general subject, they should be construed together, where there is no inconsistency between them, and effect should be given to both where possible. **State ex rel. Dick Irvin, Inc. v. Anderson**, 164 Mont. 513, 525 P.2d 564 (1974). Section 16-1045, *supra*, allows counties to issue 40 year bonds to construct hospitals. Section 16-1032, *supra*, allows counties to lease the hospitals for terms of not more than five years. There is no inconsistency between these statutes, and they must both be given effect.

**THEREFORE, IT IS MY OPINION:**

A county may not lease its hospital facilities for a term over five (5) years, pursuant to section 16-1032 R.C.M. 1947.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General