

**VOLUME NO. 36****Opinion No. 20**

**CONSTITUTIONAL LAW — County Indebtedness, Legislature's Power To Limit; COUNTIES — County Institutions, Bonds—Debt Limitation, Bonds—Tax Levy For Delinquent — Indebtedness, Limit Of—Hospital Or Nursing Home Bonds; HOSPITALS — Bonds, Issuance Exempt From General Debt Limitations, Tax Levy For Delinquent; Sections 16-1045 and 16-1046, R.C.M. 1947.**

**HELD:** 1. The Montana Legislature may constitutionally authorize county commissioners to issue, by resolution, revenue bonds in excess of \$40,000 without an election.

2. Chapter 511 authorizes the commissioners of a county having a population of less than 10,000 to levy, without an election, three (3) mills in addition to its present funding in the event the bonds issued under Section 16-1045 become delinquent or cannot be paid from ordinary revenues of the facility.

September 3, 1975

Mr. Rae V. Kalbfleisch  
Toole County Attorney  
County Courthouse  
Shelby, Montana 59474

Dear Mr. Kalbfleisch:

You have requested my opinion on the following questions:

1. May the Montana Legislature constitutionally authorize a board of county commissioners to issue, by resolution, revenue bonds in excess of \$40,000 without an election, as the Legislature has done in Chapter 511 of the Montana Session Laws of 1975?

2. Does Chapter 511 authorize the Toole County Commissioners to levy, without an election, three (3) mills in addition to its present funding in the event that the bonds become delinquent or cannot be paid from ordinary revenues of the facility?

Chapter 511 of the Montana Session Laws of 1975 provides that a county constructing a hospital or nursing home under Section 16-1008A, RC.M. 1947, may borrow money and issue bonds therefor, "[n]otwithstanding any limitation imposed by law upon the bonded indebtedness of a county...." These bonds may be issued by resolution of the county governing body without an election and with no limitation as to amount except that bonds may not be issued if the total amount of principal and interest to become due in any year on the bonds and any other bonds for which revenues from the same source are pledged exceeds the amount of the revenues to be received that year.

You have asked whether this legislative delegation of authority to the county commissioners is constitutional in view of the fact that it would allow the county commissioners to issue revenue bonds in excess of \$40,000 for a single purpose without an election approving the issuance of those bonds.

Article XIII, Section 5 of the 1889 Montana Constitution stated, in pertinent part:

No county shall incur any indebtedness or liability for any single purpose to an amount exceeding \$10,000 without the approval of a majority of the electors thereof, voting at an election to be provided by law.

However, the 1972 Montana Constitution does not continue the single-purpose debt limitation for counties. Instead, that Constitution states at Article VIII, Section 10, that "[t]he legislature shall by law limit debts of counties, cities, towns and all other local governmental entities." Thus, county debt limitations are left up to the legislature. Pursuant to the mandate of Article VIII, Section 10, the 1973 Legislature enacted a debt limitation which is codified as Section 16-807 and which reads in pertinent part, with the 1975 amendment, as follows:

No county must incur any indebtedness or liability for any single purpose for an amount exceeding \$40,000 without the approval of the majority of the electors thereof voting at an election to be provided by law, except as provided in sections 16-1407.1 and 16-1407.2.

The provisions of Chapter 511 which allow counties to bond for the construction of a hospital or nursing home without an election in an amount limited only by the anticipated revenues from pledged sources conflict with the debt limitations contained in Section 16-807. Section 16-807 is a broad statute dealing generally with county indebtedness. Chapter 511 deals specifically with county indebtedness only for the purpose of constructing a county hospital or nursing home.

It is a general principle of statutory construction that when a general and a particular statute are inconsistent, the particular statute is paramount to the

general statute. **City of Billings v. Smith**, 158 Mont. 197, 490 P.2d 221 (1971). Therefore, in the area of county indebtedness for the purpose of constructing a county hospital or nursing home, the debt limitation of Chapter 511 prevails.

Inherent in the Legislature's authority to provide debt limitations is the authority to set one general limitation and provide exemptions therefrom by establishing other limitations for particular debts. Therefore, Chapter 511 may be read as a valid exercise of the Legislature's constitutional authority to set debt limitations.

Your second question deals with interpretation of Chapter 511. Section 1, subsection 4 of that law provides as follows:

The governing body of any county having a population in excess of ten thousand (10,000) may, with respect to bonds issued pursuant to this act by the county, by resolution covenant that, in the event that at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county for the payment of such deficiency and may further covenant that at any time a deficiency is likely to occur within one (1) year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the county for the payment of such deficiency, and such taxes shall not be subject to any limitation of rate or amount applicable to other county taxes....

Toole County, having a population of less than 10,000, cannot levy a tax under subsection 4.

However, Section 2 of Chapter 511 provides:

In the event the bonds become delinquent or cannot be paid from ordinary revenues of the facility, a county which has issued bonds under Section 16-1045 may levy taxes on all taxable property within the county in the manner provided for public hospital districts under Sections 16-4309 and 16-4309.1, namely: three (3) mills not submitted to a vote of the people and three (3) additional mills approved by a vote of the people.

The purpose of your question is to ascertain whether Section 2 provides for a tax independent of the tax authorized in Section 1, the latter of which may be levied only by counties of over 10,000 in population.

I have concluded that Section 2 does provide for a separate tax. Although Section 1, subsection 4, is carefully limited in application to counties having a population in excess of 10,000, Section 2 is applicable to "a county which has issued bonds under Section 16-1045...." Any county may issue bonds under Section 16-1045. Consequently, Section 2 is not limited to counties having a population in excess of 10,000.

**THEREFORE, IT IS MY OPINION:**

1. The Montana Legislature may constitutionally authorize county commissioners to issue, by resolution, revenue bonds in excess of \$40,000 without an election.

2. Chapter 511 authorizes the commissioners of a county having a population of less than 10,000 to levy, without an election, three (3) mills in addition to its present funding in the event the bonds issued under Section 16-1045 become delinquent or cannot be paid from ordinary revenues of the facility.

Very truly yours,  
ROBERT LI WOODAHL  
Attorney General