

**VOLUME NO. 36**

**Opinion No. 88**

**HOSPITAL DISTRICTS—5% limitation on debt; HOSPITAL DISTRICTS—methods of financing; section 16-4308, Revised Codes of Montana 1947.**

**HELD: While the 5% limitation in section 16-4308 (11), R.C.M. 1947 refers to the bonded debt of a hospital district, a hospital district may only incur debt through the issuance of bonds.**

June 21, 1976

Mr. Gerald Schuster  
Deputy County Attorney  
County of Roosevelt  
Wolf Point, Montana 59255

Dear Mr. Schuster:

You have requested my opinion on the following question:

Whether the 5% limitation under 16-4308 (1), R.C.M. 1947, as amended, has reference only to the bonded debt of such hospital district or whether same applies to all outstanding indebtedness of the district.

Section 16-4308, R.C.M. 1947 contains a general grant of powers to hospital districts and also enumerates several specific powers. Section 16-4308, *supra*, reads in pertinent part as follows:

A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance and administration of such hospital facilities as its board of trustees shall deem necessary and expedient. Without limitation on the foregoing general grant of powers, a hospital district, acting by its board of trustees, may:

(3) Lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, conditional sales contract, or otherwise, and acquire real or personal property by gift;

(4) Lease or construct, equip and furnish necessary buildings and grounds and maintain the same;

(8) Borrow money and issue bonds as hereinafter prescribed;

(11) ... A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension and betterment of hospital facilities and to provide an adequate working capital for a new hospital, but the amount of bonds issued for such purpose and outstanding at any one time shall not exceed five per cent (5%) of taxable property therein, as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds....

Subsection (3) grants hospital districts the power to acquire real and personal property. Subsection (4) grants the power to lease or construct buildings. Subsection (8) grants the power to "borrow money and issue bonds as hereinafter prescribed". Subsection (11) allows hospital districts to "... borrow money by the issuance of its bonds...." Nowhere is there found any authorization to borrow money through a note and mortgage."

It is well settled that a public corporation, being a creature of statute, has only such powers 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 P.2d 708; (cites omitted) 27 **Opinions of the Attorney General**, No. 40.

In its original form, section 16-4308, *supra*, had no express provision granting hospital districts the power to issue bonds, notes, or other securities. In 27 **Opinions of the Attorney General**, No. 40, then Roosevelt County Attorney Larry Persson requested an opinion from then Attorney General Forrest Anderson on the following question:

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?

This question was answered by Attorney General Anderson in a well reasoned opinion as follows:

(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;

At that time (1957) it was clear that a hospital district had no authority to "issue bonds, securities or other obligations". In 1969 the legislature amended section 16-4308, *supra*, and granted hospital districts the authority to "... borrow money by the issuance of its bonds..." The legislature did not authorize hospital districts to borrow money by notes and mortgages. "When a power is conferred upon a municipal corporation and the mode in which it is to be exercised is prescribed by the statute or an independent act, such procedural method must be followed". *State ex rel. Daly v. Dryburgh*, 62 Mont. 36, 47, 203 Pac. 508 (1921).

The general grant of power in section 16-4308, *supra*, cannot be construed to allow hospital districts to borrow money by use of a note and mortgage. *Van Eaton v. Sidney*, 211 Iowa 986, 231 N.W. 475, 71 A.L.R. 820 (1930); *Edwards v. City of Renton*, 67 Wash. 2d 598, 409 P.2d 153 (1965).

The 5% limitation in section 16-4308 (11), *supra*, obviously applies to the bonded indebtedness of the hospital districts. The bonded debt, however, is necessarily the total debt of the district since issuing bonds is the only manner in which hospital districts may incur debt.

**THEREFORE, IT IS MY OPINION:**

While the 5% limitation in section 16-4308 (11), R.C.M. 1947 refers to the bonded debt of a hospital district, the hospital district may only incur debt through the issuance of bonds.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General