

VOLUME NO. 37

OPINION NO. 152

COUNTY COMMISSIONERS - Capacity to purchase equipment without election; PUBLIC FUNDS - County application of cash on hand and revenue sharing funds to reduce indebtedness; PURCHASING - County power to contract for installment purchases where indebtedness exceeds statutory limit; STATUTES - County indebtedness limit; REVISED CODES OF MONTANA, 1947 - Sections 16-807, 16-1407.1, 16-1407.2, 16-1803, 16-1901 through 16-1911.

- HELD: 1. A county may contract for machinery and equipment for a single purpose without a vote of the county residents when the entire expenditure will exceed \$40,000, but the remaining indebtedness after applying cash on hand and revenue sharing funds budgeted for that purpose must not exceed \$40,000.
2. A county may not contract on an installment basis to purchase machinery for a single purpose without a vote of the county residents when the entire indebtedness exceeds \$40,000 even though each annual installment is less than \$40,000.

27 June 1978

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

Dear Mr. Kalbfleisch:

You have requested my opinion on the following questions:

1. May a county contract to purchase machinery or equipment without a vote of the electorate where the entire expenditure will exceed \$40,000 but the remaining indebtedness to be budgeted for the next fiscal year will not exceed \$40,000 after applying cash on hand and revenue sharing funds budgeted for the current fiscal year?
2. May a county contract on an installment basis to purchase machinery or equipment without an election when the entire indebtedness is in excess of \$40,000 but each annual installment is less than \$40,000?

Section 16-807 of the Revised Codes of Montana, 1947, states in part:

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

This section refers to "indebtedness or liability" and is distinct from an "expenditure" of an amount exceeding \$40,000. This was recognized by our Supreme Court in State ex rel. Deiderichs v. Board of Trustees, 91 Mont. 300, 7 P.2d 543 (1932). Construing Article XIII, section 5 of the 1889 Montana Constitution, which was similar to section 16-807, the Court said that this debt limitation:

does not apply to the expenditure of cash on hand provided for a specific purpose; but rather to the creation of an obligation to be met and paid for in the future by the taxpayers.

...  
Limitations of the amount of a debt or liability of a county were never intended to prohibit the expenditure of cash on hand usable only for a designated purpose already approved by the people. Had the framers of the Constitution so intended, the word "expenditure" would have been used as in section 12 of Article XII. The county does not create a debt or liability within the meaning of this constitutional limit where the payment is to be made from funds already provided.

91 Mont. at 307, 7 P.2d at 545-546.

The debt limitation does not apply to expenditures of cash on hand. If application of cash on hand reduces the subsequent indebtedness and liability of the county to \$40,000 or less, the purchase is within the statutory debt limitation, and does not have to be voted on by county residents.

The same situation applies to revenue sharing funds as indicated in Yovetich v. McClintock, 165 Mont. 80, 526 P.2d 999 (1974). In Yovetich, the Court, citing Diederichs, said:

[I]t is plain the revenue sharing funds are not an obligation to be "met and paid for in the future by taxpayers."

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The expenditure of the federal revenue sharing does not incur an "indebtedness or a liability" of the county within the meaning of the statutory restriction. Section 16-807, R.C.M. 1947, was never intended to prevent the expenditure of revenue provided for a specific purpose, as noted in Diederichs....

165 Mont. at 85, 526 P.2d at 1001.

Application of the holdings in Diederichs, and Yovetich, to section 16-807 answers the first question. A county may contract for the purchase of machinery equipment without an election when the expenditure will exceed \$40,000 but remaining indebtedness after applying cash on hand and revenue sharing funds budgeted for that purpose does not exceed \$40,000. However, some care should be taken that budgeting procedures for capital outlay items do not violate sections 16-1901 through 16-1911, R.C.M. 1947 (County Budget System). See Burlington Northern v. Flathead County, 162 Mont. 371, 512 P.2d 71 (1973)

You also ask whether a county may contract on an installment basis to purchase machinery without an election when indebtedness exceeds \$40,000. This would be prohibited by the express language of section 16-807, since the remaining liability of over \$40,000 would constitute "an obligation to be 'met and paid for in the future by taxpayers.'" Yovetich, supra.

The language of a statute is to be construed in accordance with its usual and ordinary acceptance, with a view to be giving vitality to and making operative all provisions of the law and accomplishing the intention of the legislature when ascertainable. Burritt and Safeway v. City of Butte, 161 Mont. 530, 534, 508 P.2d 563, 565 (1973). There is no doubt as to the legislative intention regarding 16-807 determined from the following statement interpreting a similar debt limitation:

Knowing the tendency of governments to run in debt, to incur liabilities, and thereby to affect the faith and credit of the state in matters of finance, thus imposing additional burdens upon the taxpaying public, the framers of the Constitution placed positive limitations upon the power of the Legislative Assembly to incur a debt or impose a liability upon the state beyond the limit prescribed, without referring the proposition to the electorate for its approval. As to this, the comprehensive language of the section leaves no doubt.

Burlington Northern v. Richland County, 162 Mont. 364, 369, 512 P.2d 707, 709 (1973) quoting from State ex rel. Diederichs v. State Highway Commission, 89 Mont. 205, 211, 296 P. 1033, 1035 (1931).

Section 16-807 provides for two exceptions only to the debt limitation. Those exceptions, set forth in sections 16-1407.1 and 16-1407.2, relate to establishment and funding of a capital improvement fund by county fair commissions. There is no provision in these exceptions for accrual of debts in excess of the statutory limitation except possibly in relation to such capital improvement funds for county fair purposes.

You refer to section 16-1803, R.C.M. 1947, and suggest that machinery valued at over \$40,000 may be purchased on an installment basis over five years as permitted under the bidding provisions of 16-1803 without a vote. Section 16-1803 establishes procedures to be followed in obtaining bids for various amounts, and states in 16-1803(2) that when the amount to be paid exceeds \$4,000 payments may be made on an installment basis. No reference is made to section 16-807 which sets the debt limit in absence of an election. There is no repugnancy between the two statutes. Although machinery valued at over \$40,000 may be purchased without an election as discussed above, the remaining debt after application of cash on hand or revenue sharing funds budgeted for that purpose still may not exceed \$40,000. The bidding provisions of 16-1803 provide no means to contravene the express debt limitation provided by 16-807.

I conclude that a county may not contract on an installment basis to purchase machinery for a single purpose without an election when the indebtedness exceeds \$40,000 but may do so when remaining indebtedness after applying funds budgeted for that purpose does not exceed \$40,000.

The foregoing analysis applies only to "indebtedness or liability for any single purpose." The words "single purpose" have often been litigated, and according to the Montana Supreme Court, "convey to the mind the idea of one object, project or proposition--a unit isolated from all others. In other words, to constitute a single purpose, the elements which enter into it must be so related that, when combined, they constitute an entity; something complete in itself, but separate and apart from other objects." State ex rel. Turner v. Patch, 64 Mont. 565, 570-71, 210 P.748, 750 (1922); Bennett v. Petroleum County, 87 Mont. 436, 288 P. 1018 (1930); Nelson v. Jackson, 97 Mont. 299, 33 P.2d 822 (1934).

THEREFORE, IT IS MY OPINION:

1. A county may contract for machinery and equipment for a single purpose without a vote of the county residents when the entire expenditure will exceed \$40,000 but the remaining indebtedness after applying cash on hand and revenue sharing funds budgeted for that purpose must not exceed \$40,000.
2. A county may not contract on an installment basis to purchase machinery for a single purpose without a vote of the county residents when the entire indebtedness exceeds \$40,000 even though each annual installment is less than \$40,000.

Very truly yours,

MIKE GREELY  
Attorney General