

VOLUME NO. 37

OPINION NO. 89

COUNTIES - Powers to use federal revenue sharing funds to construct a medical building which will be used for public purposes; FEDERAL AID - Powers of counties to use federal revenue sharing funds to construct a medical building which will be used for public purposes; MEDICAL FACILITIES - Powers of counties to use federal revenue sharing funds to construct a medical building which will be used for public purposes; REVISED CODES OF MONTANA, 1947 - Sections 16-1008A, 16-1037, 16-1038, 69-4507(c), 69-4512, 71-106 and 71-308.

HELD: Teton County may use federal revenue sharing funds and payments in lieu of taxes to construct the medical building which is described in the October 6, 1977, Resolution of the Teton County Board of County Commissioners. The medical building will be used for public purposes within the scope of powers and duties given the County Commissioners.

10 November 1977

Martin Shannon, Chairman  
Bud C. Olson, Vice Chairman  
Myron A. Wheeler, Member  
Board of County Commissioners  
Teton County  
Choteau, Montana 59422

Dear Commissioners Shannon, Olson & Wheeler:

You have requested my opinion concerning the authority of Teton County to construct a medical building attached to the new Teton Medical Center Hospital. Included with your request is a copy of an October 6, 1977 Resolution, as amended on October 11, 1977, of the Teton County Board of Commissioners authorizing construction of the facility. The Resolution is lengthy and it sets forth in detail the pur-

poses for which the facility is to be constructed, the need for such facility, and the uses to which the facility will be put. The board proposes to use federal revenue sharing funds and payments in lieu of taxes to finance the construction.

I have previously issued an opinion concerning the construction of a medical building in Teton County. In that opinion, dated September 9, 1977 and found at 37 OP. ATT'Y GEN. NO. 61, I held that the county lacked authority to expend federal revenue sharing funds and payments in lieu of taxes to finance a medical building which would provide doctors' office and laboratory space. The county proposed to erect such building and lease it to the county's only two doctors. That opinion held that the Industrial Development Projects Act was the sole source of county power to construct facilities for lease to private persons for private purposes. Revenue bond financing is the exclusive source of financing for such projects. That opinion is limited on its facts: The building envisioned therein was a doctor's building to be used by private doctors for their private practices. Use of a building in this exclusive manner is not reasonably incident to any county powers other than the Industrial Projects Act.

Your most recent resolution makes clear that the medical building contemplated by the Commissioners will not be used solely for doctors' private purposes but will house public services and employees and ensure the supply of medical care which the county is obligated by law to provide to the indigent sick and aged. The building proposed in the board's October 6, 1977 Resolution is a "public building" which the county is empowered to erect and maintain pursuant to section 16-1008A, R.C.M. 1947.

Section 16-1008A, enumerates specific buildings which counties are empowered to erect. It additionally authorizes counties to erect "such other public buildings as may be necessary." In my prior opinion I pointed out that under section 16-1008A:

A county's power to erect a particular building depends upon whether the building is expressly authorized, such as a hospital and jail, or is incidental and necessary to some duty or power expressly mandated by statute. Arnold v. Custer County, 83 Mont. 130, 269 P. 396 (1928); 28 OP. ATT'Y GEN. NOS. 13 and 42.

The county's power under section 16-1008A to build "such other public buildings as may be necessary" must be given meaning. "Every word, phrase, clause, or sentence employed is to be considered and none shall be held meaningless if possible to give effect to it." Fletcher v. Paige, 124 Mont. 114, 119, 220 P.2d 484 (1950). Since the Legislature has expressly provided for specific county buildings in section 16-1008A, as well as other sections, e.g., section 16-1037, R.C.M. 1947 (nursing homes); the words "such other public buildings as may be necessary" must grant counties the power to erect buildings which are not specifically described elsewhere in the Code. The scope of that power is delimited by the word "necessary."

In the context of governmental powers, the word necessary is rarely used in the sense of indispensable or strict necessity. Ordinarily, the test of what is "necessary" is one of what is reasonable and appropriate. Thus in State v. Whitcomb, 94 Mont. 415, 428, 22 P.2d 823 (1933), the Montana Supreme Court construed the word "necessary" as used in an eminent domain statute authorizing the State Highway Commission to acquire rights of way where "necessary," as follows:

The statute requires that it be necessary to acquire a right of way; but the word "necessary" does not mean an absolute necessity of the particular location, but means reasonably requisite and proper for the accomplishment of the end in view, under the peculiar circumstances of the case. (Emphasis added.)

A similar test has been applied in the context of local governmental powers arising by implication from express powers.

It is well settled that a county board possesses and can exercise such powers and such powers only, as are expressly conferred \*\*\*, or such powers as arise by necessary implication from those expressly granted \*\*\*. (Emphasis added.)

Roosevelt County v. State Board of Equalization, 118 Mont. 31, 37, 162 P.2d 887 (1947); and see also State ex rel Bowler v. County Commissioners, 106 Mont. 251, 257, 76 P.2d 648 (1938). In State ex rel Bowler, supra, the Montana Supreme Court discussed the nature of county commissioner's powers:

It is true that a board of county commissioners is one of limited powers and must in every instance justify its action by reference to the provisions of the law defining or granting these powers. (Sullivan v. Big Horn County, 66 Mont. 45, 212 Pac. 1105.) Nevertheless, where there is no question of the existence of the power to do the act proposed, \*\*\*, the board may use its own discretion in selecting the course it shall pursue. The board has the control of the county's property and the management of its business and concerns. \*\*\* Within the scope of its powers it is supreme if the course pursued is reasonably well adopted to the accomplishment of the end proposed. \*\*\*

Adopting language used in State ex rel Bowler, it is my opinion that the words "such other public buildings as may be necessary," empowers counties to construct such other buildings which are "reasonably well adopted to the accomplishment" of their statutory duties and powers.

On the face of the October 6 Resolution, the proposed medical facility is reasonably and appropriately related to the discharge of specific county duties and powers. The Resolution articulates several specific county purposes which the proposed facility will serve, including the following:

1. The board intends to contract with the county's doctors for both hospital and outpatient care and treatment of the indigent sick. Pursuant to such agreement, the county will furnish office and laboratory space to the doctors in the proposed facility at a reasonable cost to the doctors. Provision will be made for outpatient care of the indigent sick at the facility and the doctors will provide medical services for the indigent sick at the adjacent hospital. The doctors will also be permitted to conduct their own private practice at the facility.
2. The county maintains a County Nursing Home. The lessee doctors will provide care for the aged sick at the Home.

3. The proposed building will provide space and facilities for the County Health Nurse.
4. The proximity of doctors to the hospital will aid an active Emergency Medical Services program which operates in conjunction with the Teton County Ambulance Service.
5. The Teton County Public Hospital District, located wholly within Teton County, has received a federal grant from the Health Underservice of Rural Areas program. Pursuant to the program a family practitioner and nurse practitioner will provide medical care in rural areas, primarily within Teton County, thereby benefitting rural county residents, including the indigent. The program will be based in the proposed facility.

The uses and purposes to which the Commissioners propose to put the building are public ones.

Counties are obligated to provide hospitalization for the indigent sick. Section 71-106, R.C.M. 1947. The county may discharge that duty by operating a county hospital or by "otherwise provid[ing] for the same." Id. Teton County proposes to discharge its duty by agreement with the Public Hospital District. The hospital must have a staff of doctors to treat its patients. The board proposes an arrangement for use of the new building to ensure that indigent persons needing hospitalization will receive proper medical treatment.

The county is further obligated to provide out-patient medical treatment for the indigent sick. Section 71-308, R.C.M. 1947, provides in relevant part:

Medical aid and hospitalization. (1) Medical aid and hospitalization for nonresidents within the county and county residents unable to provide such necessities for themselves are the legal and financial duty and responsibility of the board of county commissioners, except as otherwise provided in other parts of this act, payable from the county poor fund. The board of county commissioners shall make provisions for competent and skilled medical or surgical services \* \* \*.

(2) The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by the physicians appointed by the board who shall be known as county physicians or deputy county physicians, and may fix a rate of compensation for the furnishing of the medical attendance.

The board proposes an arrangement tying the rental of office space to doctors' agreements to provide medical out-patient care of the county's poor. It also intends to utilize the building for such care and finds that the location of the building will also promote and facilitate more efficient use of doctors' and the hospital's time in diagnosing and treating the indigent sick.

The county operates a County Nursing Home. The Home must first serve the indigent aged; residence for the non-indigent aged may be provided if space is available. Sections 16-1037 and 16-1038, R.C.M. 1947. Provision for medical care for the aged sick is a necessary incident to the operation of the Home.

Teton County also has authority to employ, and does employ, a County Health Nurse under any one of several statutory provisions. E.g., sections 69-4507(c), 69-4512, 71-106 and 71-308, R.C.M. 1947. The new building will provide the Health Nurse with necessary space and facilities.

Finally, the county is empowered to and does operate an ambulance service. Sections 69-3601 and 69-3602, R.C.M. 1947. The board finds that centralization of doctors' offices adjacent to the hospital will promote better emergency service through fast and efficient cooperation of doctors, the hospital and Emergency Medical Services personnel.

The board's judgment that the proposed medical building is necessary to the discharge of its statutory duties and powers cannot be said to be arbitrary or a manifest abuse of discretion. See State ex rel Bowler v. Board of County Commissioners of Daniels County, supra. It is therefore my opinion that pursuant to section 16-1008A, Teton County has the authority to build the medical facility described in the October 6 Resolution.

Since erection of the building described in the board's Resolution is within the county's powers under section 16-1008A, it follows that the county may use general funds,

federal revenue sharing funds, or federal payments in lieu of taxes, or any combination thereof, to pay for the cost of construction. See 37 OP. ATT'Y GEN. NO. 61, page \_\_\_\_.

THEREFORE, IT IS MY OPINION:

Teton County may use federal revenue sharing funds and payments in lieu of taxes to construct the medical building which is described in the October 6, 1977 Resolution of the Teton County Board of County Commissioners. The medical building will be used for public purposes within the scope of powers and duties given the County Commissioners.

Very truly yours,

MIKE GREELY  
Attorney General