

VOLUME NO. 38

OPINION NO. 56

COUNTY COMMISSIONERS - Authority to contract for lease without election;

CONTRACTS - Application of debt limit to installment lease contract;

MONTANA CODE ANNOTATED - Section 7-7-2101;

OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 152 (1978).

HELD: A contract whose total liability exceeds \$40,000 must be approved by the voters under section 7-7-2101, MCA, even though it provides for annual payments of less than \$40,000, an option to purchase at the end of the contract term for an additional payment less than \$40,000, and an option to cancel at any time.

23 November 1979

J. Fred Bourdeau, Esq.  
Cascade County Attorney  
Cascade County Courthouse  
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested my opinion on the following question:

May the county enter into a lease whose total obligation exceeds \$40,000 without a vote of the electorate under section 7-7-2101, MCA, if the contract provides:

(a) that the annual lease payments individually will not exceed \$40,000;

(b) that the county has an option to purchase the equipment at the end of the lease period for an additional payment of less than \$40,000; and

(c) that the county has the option of cancelling the contract at the end of each annual payment period without further payment?

In 37 Op. Att'y Gen. No. 152 (1978), I held that the condition set forth in subpart (a) above does not take a contract out of the debt limit provisions of section 7-7-2101, MCA. I continue to adhere to that holding.

The condition set forth in subpart (b) is likewise of no avail. The debt limit set forth in section 7-7-2101, MCA, applies to prevent the county from incurring a present indebtedness which will be a burden on future taxpayers. Thus, in State ex rel. Deiderichs v. Board of Trustees, 91 Mont. 300, 7 P.2d 543 (1932), the Montana Supreme Court held that the debt limitation did not apply to bar an expenditure in excess of \$40,000 financed by cash specifically appropriated from then available funds. Likewise, in Yovetich v. McClintock, 165 Mont. 80, 526 P.2d 999 (1974), the court held that an expenditure of currently available revenue sharing funds was not an "indebtedness or liability" subject to the statutory debt limit. However, the situation described in subpart (b) of your question is quite different. Even if the county exercises its option to purchase at the end of the lease period for an amount less than \$40,000, the entire course of lease payments will have already been made, and your letter makes clear that the total amount of such payments will far exceed \$40,000. Diederichs and Yovetich teach that such an expenditure may be made without a vote of the electorate only if the total expenditure does not exceed \$40,000, or the funds to be expended are presently available for appropriation, and are not to be taxed from future taxpayers.

You also inquire whether an option to cancel the contract at any time will take it out of the debt limit. The essence of your question is whether the debt limit applies to liabilities whose actual amount is uncertain but which may exceed the \$40,000 single purpose limit. I conclude that the limit does apply. The statute is an absolute prohibition on liabilities which exceed \$40,000, unless such liabilities are approved by the voters before they are incurred. In the case of a contract with an option to cancel, it is impossible to determine whether the contract will exceed the debt limit until such time as the contract is cancelled or the total expenditure exceeds \$40,000. If the latter occurs, the purpose of the statute will be circumvented, since the voters will not have had the opportunity to approve the project prior to its inception. This possibility requires the conclusion that any liability incurred for a single purpose must be given prior approval by the electorate if it is possible, under the terms of the contract, that the total liability may exceed \$40,000.

THEREFORE, IT IS MY OPINION:

A contract whose total liability exceeds \$40,000 must be approved by the voters under section 7-7-2101, MCA, even though it provides for annual payments of less than \$40,000, an option to purchase at the end of the contract term for an additional payment less than \$40,000, and an option to cancel at any time.

Very truly yours,

MIKE GREELY  
Attorney General