

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 29

COMMUNITY COLLEGES - Authority to issue revenue bonds to finance construction of;

COUNTIES - Authority to issue revenue bonds to finance community college construction;

SCHOOL DISTRICTS - Authority to issue revenue bonds to finance community college construction;

MONTANA CODE ANNOTATED - Sections 20-6-621, 20-9-401(2), 20-9-406, 20-9-421, 20-9-451 to 20-9-456, 20-15-101, 20-15-103, 20-15-301, 20-15-309, 20-15-311, 20-15-403, 20-15-404, 90-5-101(4), 90-5-101(5), 90-5-101(8), 90-5-102(1).

HELD: Flathead Valley Community College District may borrow funds from Flathead County to finance proposed school construction, subject to applicable school law.

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2 October 1987

Ted O. Lympus
Flathead County Attorney
Flathead County Courthouse
Kalispell MT 59901

Dear Mr. Lympus:

You have requested my opinion concerning an arrangement between Flathead Valley Community College District (the District) and Flathead County (the County), whereby the County would issue revenue bonds for the purpose of defraying the costs associated with the District's proposed project to acquire, construct, and furnish buildings to be used for college purposes. You have posed several questions about the propriety of such an arrangement, which would involve either a loan agreement or a lease-purchase agreement between the County and the District.

A. County's Authority to Issue Bonds.

Your first question is whether the County has the authority to issue revenue bonds for the purpose of financing the costs of the proposed campus construction. Under one alternative plan, the County would enter into an agreement to loan the proceeds from the bond sale to the District for the construction project. The second alternative plan involves the County or a third party undertaking the construction project and leasing it to the District by means of a lease-purchase agreement, with title passing to the District after 20 years. Under both alternatives the District would pay off the loans (or the lease) from revenue sources provided in the District's unrestricted budget, with no use of revenues from a voted levy unless approved by the voters. The principal amount of the loan (or lease), when added to all other indebtedness of the District, would not exceed the maximum amount for which a school district may become indebted by the issuance of bonds under section 20-9-406, MCA.

Counties are authorized to issue revenue bonds to defray the cost of industrial development projects. § 90-5-102(1)(d), MCA. As the result of an amendment enacted by the Montana Legislature in 1986, the definition of "project" includes land, buildings, or other improvements, and any other real or personal property deemed necessary in connection therewith, which shall be suitable for use for "higher education

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facilities." § 90-5-101(8), MCA. The phrase "higher education facilities" means any real or personal properties required or useful for the operation of an institution of higher education. § 90-5-101(4), MCA. I assume for the purposes of this opinion that Flathead Valley Community College is an institution of higher education. See §§ 20-15-101, 90-5-101(5), MCA.

The statutes pertaining to the issuance of revenue bonds for industrial development projects contemplate that the proceeds from the sale of revenue bonds may be loaned to others for the purpose of defraying the costs of the project or may be used by the county itself to acquire or construct the project and lease it to another. §§ 90-5-102(1)(a) through (c), MCA. I conclude from these statutes that Flathead County does have authority to issue revenue bonds for the purpose of financing Flathead Valley Community College District's proposed project, and that the County may either loan the proceeds from the bond sale to the District or carry out the project itself and then lease it to the District. My opinion is subject to the County and the District meeting all other legal requirements contained in the statutes on industrial development bonds and the statutes on bonded indebtedness in general. Some of these statutes are discussed below.

B. Community College District's Authority to Borrow.

Your second and third questions concern whether the District has the authority to borrow money from the County to finance the project either through a loan agreement or a lease-purchase agreement, as previously described in the first part of this opinion.

In order to answer these questions, it is necessary to consider the community college statutes (Tit. 20, ch. 15, MCA), as well as those statutes which authorize the issuance of industrial development bonds for higher education facilities (Tit. 90, ch. 5, pt. 1, MCA). Every new act takes its place as a component part of an extensive system of existing written laws, 2A Sutherland Statutory Construction § 53.01 (4th ed. 1973), and statutes must be harmonized if possible. Crist v. Segna, 38 St. Rptr. 150, 152, 622 P.2d 1028, 1029 (1981).

Section 20-15-301, MCA, permits community colleges to construct or purchase school buildings, borrow moneys for those purposes, and repay such obligations from the various revenues of the college.

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Certain restrictions do apply, however. Sources of revenue for community colleges are limited by section 20-15-311, MCA, and supervision by the state's Board of Regents is necessary. See §§ 20-15-103, 20-15-309, MCA. Moreover, section 20-15-404, MCA, provides a list of specific statutes to which the trustees of a community college district must adhere. Some of the statutes listed in section 20-15-404, MCA, may apply to the facts of your inquiry, and others may not. For example, section 20-9-406, MCA, must be adhered to because it sets limits on the amount that a school district may become indebted by the issuance of bonds, regardless of whether they are issued by the County or by the District. Section 20-6-621, MCA, requires that qualified electors in a district approve most school site selections, as has apparently been done by the electors in Flathead Valley Community College District, according to the material supplied with your opinion request.

C. Requirement for Holding an Election for Bonds.

Section 20-15-404, MCA, also requires that community colleges adhere to the school bond statutes found in Title 20, chapter 9, MCA. Some of these statutes require that elections be held under certain circumstances. If a conflict arises between the provisions of the school laws and any other state law, the school laws govern. § 20-9-401(2), MCA. Section 20-9-421, MCA, which requires voter approval if a school district issues bonds, does not apply in this case since it is contemplated that the County, rather than the District, will issue bonds authorized by the industrial development bond statutes. Section 20-9-451, MCA, however, which requires an election for bonds issued by a county in connection with a county high school, is applicable in the instant case, for the following reasons.

As has already been mentioned, the community college statutes specifically require adherence to certain other statutes, including sections 20-9-451 to 456, MCA. Sections 20-9-451 to 456, MCA, set forth the procedure for indenting a county for high school facilities when the county high school in such county has not been placed in a high school district by the high school boundary commission. Voter approval is required before bonds may be issued. § 20-9-453, MCA. At first glance it might seem that these statutes are inapplicable to bonds issued for defraying the costs of a community college district. However, the Legislature expressly required that community colleges adhere to these

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statutes. See Kish v. Montana State Prison, 161 Mont. 297, 301, 505 P.2d 891, 893 (1973). Thus, for purposes of your request, sections 20-9-451 to 456, MCA, should be read to apply to the Flathead Valley Community College District by inserting the phrase "community college" in place of "a county high school that has not been placed in a high school district."

I conclude that those statutes mentioned in the foregoing discussion authorize Flathead Valley Community College District to borrow money from Flathead County to finance the District's proposed school construction project, either through the loan agreement or the lease-purchase agreement described in your opinion request. As already noted, the County and the District must comply with other applicable statutes, some of which I have discussed in this opinion. See generally the statutes on community colleges, §§ 20-15-101 to 404, MCA, and specifically §§ 20-15-403 and 20-15-404, MCA.

THEREFORE, IT IS MY OPINION:

Flathead Valley Community College District may borrow funds from Flathead County to finance proposed school construction, subject to applicable school law.

Very truly yours,

MIKE GREELY
Attorney General