

Opinion No. 26

**COUNTIES, Bonds, Purposes of, Construction of court house—COUNTY COMMISSIONERS, Powers of, Construction of Buildings, how financed—COUNTY COMMISSIONERS, Powers of, Indebtedness, borrowing money from banks prohibited—Article XIII, Section 5, Constitution—Section 84-4195 (d), RCM, 1947—Section 16-2304, RCM, 1947—Section 16-2008, RCM, 1947—Section 16-1008, RCM, 1947**

- Held: 1. The Board of County Commissioners has no authority to borrow money from a bank for the purpose of constructing a courthouse.**
- 2. The proper method of financing the construction of a courthouse is by the issuance of county bonds under the procedure fixed by statute.**

---

September 28, 1959

Mr. John A. Forsythe  
Treasure County Attorney  
Hysham, Montana

Dear Mr. Forsythe:

You requested my opinion as to whether Treasure County may borrow money from a bank and pledge as security for the loan the proceeds of contracts for the sale of tax deed lands by the county. You advised me that the loans are to be repaid from the proceeds of the sale which are in excess of the delinquent taxes. You asked in particular if such a loan may be made without an approving vote of the qualified electors.

Under subsection (d) of Section 84-4195, RCM, 1947, it is provided that the excess received from the sale of tax deed lands, after the payment of \$10.00 to the county general fund and the crediting to the proper funds of all accrued taxes and assessments, shall be credited to the general fund of the county. This statute does not authorize the board of county commissioners to segregate the moneys received from other moneys in the general fund and use the same for a building fund or as a pledge for a loan.

A well-established principle in Montana is that a Board of County Commissioners has only such powers as are conferred by law, either expressly or by necessary implication (*Franzke vs. Fergus County*, 76 Mont. 150, 245 Pac. 962). If there is no statutory provision made for a county to borrow money from a bank, such a manner of financing cannot be used by the Board of County Commissioners. Under Chapter 23, Title 16, RCM, 1947, and Section 5 of Article XIII of the Montana Constitution, it is provided that a county cannot borrow money in excess of \$10,000.00 without the approval of the qualified electors. Section 16-2304, RCM, 1947, which was enacted in 1895, defines the method for securing the approval of the electorate and provides that the ballot shall contain "for the loan" and "against the loan". The purposes for which loans may be made are not enumerated in Chapter 23 of Title 16.

The authority for the issuance of bonds by the Board of County Commissioners is found in Section 16-2008, RCM, 1947. One of the

purposes specified in this statute is the construction of necessary public buildings. It is stated in Section 16-1008, RCM, 1947, that the commissioners may erect a courthouse. In other words, there is specific power granted to the commissioners to issue bonds for the purpose of constructing a courthouse. Borrowing money by the Board of County Commissioners from private banks by means other than that of bonds is not granted by any statute.

In the case of *Dietrich vs. City of Deer Lodge*, 124 Mont. 8, 218 Pac. (2d) 708, our Supreme Court considered the power of a city to issue general obligation bonds for the paving of streets. The court in denying the authority to issue the bonds said that the proper method was by special improvement district and stated:

"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."

Another obstacle to the plan proposed by your letter is the provision of Section 5 of Article 13 of the Constitution, which reads as follows:

"No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars (\$10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law."

The above quoted constitutional provision does not apply to the expenditure of funds which are on hand and which will not result in an obligation to be met and paid in the future by the taxpayers (*State ex rel. Diederichs vs. Board of Trustees*, 91 Mont. 300, 7 Pac. (2d) 543) but such restriction would apply to contracts for the sale of tax deed land as the proceeds of such contracts are not on hand and under subsection (d) of Section 84-4195, RCM, 1947, any excess must be credited to the general fund.

It has been suggested that the Board of County Commissioners may pledge the revenue from the tax deed contracts to the payment of a loan from the bank, which loan will not be a direct obligation from the county and thus avoid the requirements of Section 5, Article XIII of the Constitution. As was pointed out above, the Board of County Commissioners has limited powers and there is no statutory authority expressed or implied which would permit the pledging of the excess funds from the tax deed contracts to the payment of the loan from the bank.

It is, therefore, my opinion:

1. The Board of County Commissioners has no authority to borrow money from a bank for the purpose of constructing a courthouse.

2. The proper method of financing the construction of a courthouse is by the issuance of county bonds under the procedure fixed by statute.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General