

School District Bonds, When May Be Issued. Bonds, of School District in Excess of Statutory Limit. Trustees of District. Power to Issue Bonds When Voted in Excess of Limit. School Board, When May Issue Bonds. Election for Bonds in Excess of Limit, When May Issue.

Where the electors of a school ditsrict authorize the issuance of bonds in a sum exceeding the statutory limit, the school board may issue bonds upto such limit.

Where the bonds are authorized to be issued in a certain amount, the board may issue them in a lesser amount if the interests of the district are best subserved thereby.

Helena, Montana, November 3, 1915.

Hon. State Board of Land Commissioners,

Helena, Montana.

Gentlemen:

I am in receipt of a letter addressed to you by the county superintendent of schools of Dawson County, involving two propositions:

1. Where the electors of a school district have authorized the issuance of bonds in a certain sum for the purchase of a school site, the erection of a building thereon, and furnishing the same, has the board the authority to issue bonds in a lesser amount than that voted?

2. Where the electors of a district authorize the issuance of bonds in a certain amount which is subsequently found to be in excess of the statutory limit, has the school board the authority to issue bonds up to such limit?

1. Section 2015, Chapter 76, Laws of 1913, authorizes the issuance of bonds for the purposes indicated, and provides that the trustees shall "submit to the electors of the district the question whether the board shall be authorized to issue bonds to a certain amount not to exceed three per cent of the taxable property in said district, bearing a certain rate of interest not exceeding six per cent per annum."

The form of ballot prescribed by law for such elections, contains the amount of the bonds, the maximum rate of interest, the maximum period for which the bonds run, and the purposes for which they were to be issued. Nowhere in the law is there any statement made or required to be submitted to the electors as to the character of the house to be built. Subdivision 8 of Section 508, of said Chapter 76, confers authority upon the school board to build school houses, but the question as to the kind of a house to be built is not submitted to the electors, but appears to be left to the discretion of the school board. This precise question has never been directly passed upon by our Supreme Court, but in considering a somewhat analogous statute, Section 3454, Revised Codes, relating to the issuance of bonds by cities and towns, the court in effect held that the proper procedure was to submit to the electors the definite amount of the bonds, and that the council would then be free to spend the entire amount in making the purchase then in mind, or could spend a lesser amount in making the same, or a different purchase, if the welfare of the municipality would be equally conserved. It was further held that the determination of the character of the improvement, was a matter which rested in the discretion of the city council, and that it could not lawfully divest itself of this responsibility by casting it upon the voters.

Carlson v. City of Helena, 39 Mont. 82, 106, citing 28 Cyc, 277; *Dillon Municipal Corporations*, 4th Ed. Sec. 96.

If bonds were authorized to be issued in a definite amount, for the purposes above indicated, and the school board subsequently found that it could execute the trust and erect the building for a much lesser amount, it would be idle to say that the board would still be bound to expend the full amount for which the bonds were authorized to be issued. The determination of the character of the building resting in the discretion of the school board, and the uncertainty of the cost until definite plans are prepared and the contract let, render it very obvious that the maximum amount of bonds voted, only fixes the limit beyond which the board cannot go, but that it is authorized, and in fact it is its duty to spend any lesser amount if the welfare of the district may be subserved thereby.

2. The purpose of submitting the question to the electors as to the issuance of bonds, is to vest authority in the school board indicated. If the electors authorize the expenditure of a certain amount, and it is subsequently found that this amount is in excess of the three

percent limit, then the law steps in, and in effect says to the board, while the electors have authorized you to spend a certain amount, yet by the terms of the law you are prohibited from spending that much. The electors by their vote in such a case have simply authorized the trustees to spend an amount equal to three percent, as provided in Section 2015 of said Chapter 76. There is ample authority to sustain this proposition. The Supreme Court of Minnesota in passing upon a similar question, held that where bonds were voted in excess of the limit authorized by law, that they were "void only to the extent of the excess over the statutory limitations."

State v. District Court, 102 Minn., 482; 43 N. W. 697.

The voting for more bonds than can be lawfully issued, does not invalidate the vote, and bonds under such a vote may be issued to the lawful limit.

Rathbone v. Board of Commissioners, 73 Fed. 395, 597;

Chicago K. & W. R. Co. v. Commissioners, 38 Kan. 597, 16 Pac. 828;

See also Nolan Co. v. State, 83 Tex. 182, 17 S. W. 823;

Aetna L. Insurance Co. v. Lyon Co., 95 Fed. 325; 11 Cyc, 533.

In the particular case submitted, it appears that the school district authorized the issuance of bonds in the sum of \$3,500. When it was subsequently found that this exceeded the statutory limit by some two or three hundred dollars, the question being whether the board could issue bonds for the lesser amount, keeping within the limitation, the answer is in the affirmative.

Yours very truly,

J. B. POINDEXTER,

Attorney General.