School Board, No Authority to Exceed Debt Limit. Debt of School District, Not to Exceed Three per cent Valuation. Power School Board, to Issue Warrants When. Estoppel, School District to Deny Debt When.

The Board of School tructees is not vested with authority under any circumstances, to issue warrants or, other indebtedness in excess of three percentum of the taxable property therein.

June 27, 1916.

Hon. Herbert H. Hoar,
County Attorney,
Sidney, Montana.

Dear Sir:

I am in receipt of your letter of the 20th instant, relating to matters heretofore submitted by wire, to-wit:

> The authority of a school district to issue warrants, or other evidence of indebtedness, in excess of "three percentum of the value of the taxable property therein".

The prohibitions contained in Section 6, Article XIII of the State Constitution, and in Section 2015, Chapter 6, of Chap. 76, Session Laws of 1913, are direct and emphatic, to the effect that indebtedness in excess of three percentum shall not be incurred. The Supreme Court as we know, has given this constitutional provision a very strict construction.

Opinions Attorney General 1912-14, p. 246, and cases there cited.

There is not any doubt as to the existence of a general principle of law that where a municipality has received the benefit as improvements, resulting from an illegal contract, and the contract has been fully executed, that it may, if the conditions warrant it, be required in equity to surrender the improvements, or to reimburse the other party therefore; but, neither a court of equity, or of law, would have any right or jurisdiction to direct either a school district or any municipality to issue its evidence of indebetedness in excess of the limit fixed either in the Constitution or in the statute; for this would be accomplishing by indirection that which both the constitution and the law forbids to be done at all.

In State ex rel v. Dickerman, 16 Mont. 278, the Supreme Court of this state discusses this principle to some extent, and in the brief therein of appellant, at page 282, is contained a list of cases which discusses quite fully this very question. The case of Brown v. City of Atchison, 39 Kansas, 37, 17 Pac. 465, is there considered.

Whether or not in this particular case, equity would give relief, is a question which the equity court would determine from the particular facts and conditions existing, and is not a question which may be determined as an abstract proposition of law. We may only know

to a certainty that not any court would direct the board of trustees to violate the constitution or statutory mandate.

The cases of

Board v. Foley, 90 Ill. App. 494;

School District v. Swaze, 29 Kan. 211;

McGilvery v. School District, 112 Wis. 354; 88 Am. St. Rep. 969; all cited by you in your letter, furnishes a very good discussion.

I am inclined to the view that it would require a specific showing of facts before a court of equity could be moved to holding the district liable at all events in the particular case; and that before the Board would be justified in issuing warrants, which on the face of the record appeared to exceed the constitutional limit of indebtedness, a decree of some court of competent jurisdiction should be obtained. Otherwise, the members of the board might assume a personal liability.

Your opinion on the matter is affirmed.

Yours very truly,

J. B. POINDEXTER,

Attorney General.