

Bonds—Funding Bonds—Exchange of for Outstanding Warrants—Validity of Without Submitting to Vote of Electors When Exceeding \$10,000.

Funding bonds cannot be issued and exchanged for any outstanding warrants that are not a general liability on all the property in the county, without first receiving authority so to do by vote of the electors of the county.

Funding bonds cannot be sold for the purpose of paying off outstanding warrants of any kind, without a vote of the electors of the county.

C. C. Rowan, Esq.,
County Attorney of Carbon County,
Red Lodge, Montana,

My dear Mr. Rowan:

I am in receipt of your letter asking for answers to the following questions:

“1. Can the Board of County Commissioners issue, advertise and sell funding bonds in the amount of over ten thousand dollars without submitting issuance of same to a vote of the electors of the county, the proceeds of the sale to be deposited in the county treasury, in order to call, and take up, outstanding road warrants or other warrants?”

“2. Can the Board of County Commissioners issue funding bonds in the amount of over ten thousand dollars without submitting issuance of same to a vote of the electors of the county, to take up outstanding road and other warrants, where such bonds are to be transferred to the holders of such outstanding warrants dollar for dollar, and no sale of the funding bonds made?”

In construing Sections 2905 and 2933 of the Revised Codes of 1907, the Supreme Court of Montana, in the case of *Edwards v. Lewis and Clark County*, 53 Mont. 359, 165 Pac. 297, held that the Board of County Commissioners could not issue bonds, in excess of \$10,000, for the purpose of refunding outstanding road warrants, without having first obtained the approval of the electors of the county.

Subsequently to the above decision the Legislature saw fit to amend Section 2933 by adding thereto a clause, “provided, that it shall not be necessary to submit to the electors the question of borrowing money to refund outstanding bonds, * * *” (Chap. 92, 16th Session Laws).

This amendment does not change the law as declared in *Edwards v. Lewis and Clark County*, *supra*, as the amendment provides only for “*borrowing money to refund outstanding bonds.*” There is the same

distinction between warrants and bonds, as there is between checks and promissory notes. One is an order to pay money and the other is a definite promise to pay at a certain definite time.

9 Corpus Juris, 8;
Shelly v. St. Charles County Ct., 21 Fed. 699.

It is clear that the Legislature did not intend to authorize the funding of warrants without a vote of the electors, or the amendment would have read "bonds and warrants." The funding of outstanding bonds does not increase the debt; it merely changes the form thereof, much as one who owes a past due note at the bank will give a new note in lieu thereof.

If the refunding bonds are issued and exchanged, dollar for dollar, for warrants that are a general obligation upon all the property of the county, the county neither borrows money nor creates a debt. It is merely a substitution, much as one would give a promissory note to a merchant to whom one owed an open account. The indebtedness still exists although evidenced in a different form, but the funding of outstanding warrants changes the form of the debt, and also changes the debtor, as the issuing of bonds to refund would thus change the debt from an obligation on part of the property of the county to an obligation on the entire property of the county, road warrants not being an obligation on the property of incorporated towns and cities.

It is therefore my opinion:

1st. That the county cannot sell funding bonds in an amount over ten thousand dollars for the purpose of paying off outstanding warrants of any kind, without first receiving authority to do so by vote of the electors of the county.

2nd. That the county cannot issue funding bonds in an amount over ten thousand dollars and exchange them dollar for dollar, for any outstanding warrants that are not a general liability on the property of all the county, without first receiving authority so to do by vote of the electors of the county.

As to whether the county can issue funding bonds in an amount over ten thousand dollars, and exchange them dollar for dollar for outstanding warrants that are not a general liability on the property of the entire county, after receiving authority to do so by a vote of the electors of the county, no opinion is given, that question not having been submitted.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.