

**Treasury Notes — Constitutional Law — Indebtedness—
Creation of.**

A law providing for borrowing two million dollars on treasury notes of the State for the purpose of paying outstanding and accruing claims against the General Fund, and for the retirement of such treasury notes with moneys from the collection of taxes already levied within two years of the issuance of the treasury notes, is valid and effective without submission to a vote of the people, under the constitutional requirement that "no debt or liability shall be created which shall singly, or in the aggregate with any existing debt or liability, exceed the sum of \$100,000.00," unless the law authorizing the same shall have been submitted to a vote of the people.

To the Senate Judiciary Committee,
Helena, Montana.

Gentlemen:

You have requested my opinion as to the constitutionality of the legislation proposed in Senate Bill 283, which authorizes the State of Montana to borrow two million dollars on treasury notes for the purpose of paying outstanding and accruing claims against the General Fund of the State, and to take up the treasury notes with interest, with moneys from the collection of taxes levied for general State purposes for the years 1921 and 1922.

Section 2 of Article XIII of the Constitution of Montana provides as follows:

"The legislative assembly shall not in any manner create any debt except by law which shall be irrevocable until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purpose to which the funds so raised shall be applied and provide for the levy of a tax sufficient to pay the interest on, and extinguish the principal of such debt within the time limited by such law for the payment thereof; but no debt or liability shall be created which shall singly, or in the aggregate with any existing debt or liability, exceed the sum of one hundred thousand dollars (\$100,000) except in case of war, to repel invasion or suppress insurrection, unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election."

If the borrowing of this money on treasury notes creates an indebtedness within the meaning of Section 2, Article XIII, then the Act of the Legislative Assembly would be invalid unless submitted to a vote of the people.

The Legislature of the State of Idaho, in 1919, enacted a law almost identical with Senate Bill 283, providing for the issuance of treasury notes in the sum of three million dollars. The Constitution of Idaho provides that the Legislature shall not "in any manner create any debt or debts, liability or liabilities, which shall exceed in the aggregate the sum of two million dollars," unless such law shall have been submitted to the people.

In the case of State ex rel. Black v. Eagleson, 181 Pac. 934, the Supreme Court of Idaho, in upholding the constitutionality of the law, quoted the language of the Supreme Court of South Dakota in a similar case, as follows:

"Appropriations from the assessed, but uncollected, revenues of the state, and the issuance of warrants in pursuance thereof, is not the incurring of an indebtedness,"

within the meaning of a constitutional provision similar to that of Idaho and that of Montana.

The Idaho court, in approving the above language, says: "This is the correct rule, and it applies to treasury notes with equal force as to state warrants."

The Supreme Courts of the states of California, Nevada, South Dakota, Ohio, Kentucky, Oklahoma and Alabama have reached the same conclusion as the Idaho court on this question.

State v. McCauley, 15 Cal. 430;
McCauley v. Brooks, 16 Cal. 28;
State v. Parkinson, 5 Nev. 15;
Rhea v. Newman, 156 S. W. 154;
In re State Warrants, 6 S. Dak. 518;
State v. Medberry, 7 Ohio St. 529;
Bryan v. Menefee, 97 Pac. 471;
Brown v. Gay-Padgett Hardware Co., 66 So. 161.

In view of the decisions of the courts above referred to, it is my opinion that Senate Bill No. 283, if passed by the Legislative Assembly and approved by the Governor, will be constitutional and valid without the necessity of submitting it to a vote of the people.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.