

High School Warrants—Issuance of Bonds—Constitutionality of Chapter 189 of the Laws of 1921.

Chapter 189 of the Laws of 1921 is constitutional, and warrants issued as provided for by said Act are valid.

Bonds issued under the provisions of said Act for the funding of warrants are valid.

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My dear Mr. King:

You have requested my opinion on the following questions:

- "1. Are High School warrants issued under Chapter 189 of the Laws of 1921 valid?
- "2. Will bonds issued under the provisions of said law be valid?"

Your inquiry raises the question of the constitutionality of Chapter 189 of the Laws of 1921.

This Chapter provides, in part, as follows:

"Section 1. That the board of county commissioners of any county in the State of Montana shall have, and are hereby given in addition to the powers already conferred upon them, authority whenever at any time such county high school shall have a floating indebtedness incurred on or before July 1st, 1921, for teachers' salaries, school supplies, equipment, new buildings heretofore completed, necessary repairs to school buildings, heating plants therein or other necessary expenses incurred in the maintenance of such county high school, represented by warrants heretofore issued, whether in excess of funds on hand and anticipated revenues or otherwise, to fund such indebtedness and to issue negotiable coupon bonds therefor and to pledge the credit and resources of the county for the payment of the principal and interest of such bonds.

"Section 2. In addition to the powers conferred by Section 1 of this Act and in anticipation of the subsequent issuance of the funding bonds authorized by this Act, but subject to the constitutional limitations as to the total indebtedness of counties, all boards of trustees of county high schools are hereby given authority to issue warrants in excess of the available funds of the county high school, and in excess of the amount levied by the county high school board of trustees for the current school year. Such warrants shall be issued only in payment of the current expenses of the county high school for the completion of the school year of 1920-21, and not for the purpose of increasing salaries, purchasing new equipment or increasing school facilities in any manner whatsoever. The warrants so issued may likewise be funded in accordance with the terms of this Act.

"Section 3. Funding bonds authorized by this Act shall be issued under the following conditions, to-wit:

1. When there is not sufficient money to the credit of such county high school applicable to the payment of any such outstanding indebtedness; and,

2. When, in the judgment of the board of school trustees, to levy and collect a tax for the purpose of paying such indebtedness would be a hardship and burden to such county.

"Provided, it shall not be necessary to submit the question of the issuance of such bonds to fund such indebtedness to the vote of the electors of the county."

The Legislature provided that the cost of establishing County Free High Schools, should be met by a tax levy upon the entire county. (Chap. 76, Sess. Laws of 1913, Sub-chapter XXI.) Subsequently, provision was made that the High School tax should be divided between the County High School and accredited District High Schools within the county. (Chap. 119, Laws of 1915.) The County Free High School, nevertheless, remains a county institution. Any pupil in the county may attend it free of charge. The law makes it the duty of the trustees to provide accommodations for such pupils. (Sub-Sec. (f), p. 300, Laws of 1913.)

The warrants of the County High School are, therefore, county warrants and are a valid obligation of the entire county when issued in pursuance of statutory authority and within constitutional limits. Funding bonds issued in lieu of such warrants must, therefore, be an obligation of the entire county, and the tax provided to be levied to retire such bonds must be levied on the property of the entire county.

In *Hamilton v. Board of County Commissioners*, 54 Mont. 301, 306, the Supreme Court used the following language:

"A county bond is one issued by the county, and to the payment of which the full faith and credit of the entire county are pledged. The correctness of this definition was recognized in *Edwards v. Lewis and Clark County*, 53 Mont. 359, 165 Pac. 297.. A bond which imposes an obligation upon a district less than an entire county cannot be denominated a county bond in any proper sense of the term.

"If these bonds are not county bonds, then the legislators failed to express their intention and failed to make any valid provision for their payment.

"(a) Throughout the School Code wherever county high school bonds are mentioned, they are referred to as county bonds. For instance, by section 2109, and by the same section as amended, the question to be submitted is whether '*county bonds*' shall be issued. Section 2110 of the same Code referring to bonds issued for county high school purposes, provides: 'Said bonds shall be paid, principal and interest, in the manner provided for the payment of other county bonds.'

"(b) The only provision for the payment of county high school bonds is found in paragraph 2 of section 2109 of the School Code, and in the corresponding paragraphs of the

same section as amended by Chapter 167 above. The county commissioners are commanded to levy a tax each year 'upon the taxable property in the county for the interest and redemption of said bonds'; that is to say, they must provide by taxation for the payment of the interest each year, and ultimately they must provide by the same means for a sinking fund to discharge the principal at maturity. If the statute concluded with this paragraph, it would not be open to the criticism made upon it; but paragraph 3 of the original section, and the corresponding paragraph in the same section in its amended form, provides: 'The limitations on the indebtedness to be created by the issuance of bonds in such cases, and the method of levy, assessment and collection of taxes for the payment of bonds so issued, hereinabove set forth, shall apply only to so much of the said county as shall not be included in the school district or school districts which shall continue to maintain district high schools as herein provided.' As applied to the facts of this particular case, that paragraph would read as follows: The county commissioners shall annually levy a tax for the interest and redemption of said bonds only upon the taxable property in the county outside the limits of the eleven districts, in each of which a district high school is maintained.

"It is conceded by both parties to this litigation that this provision is unconstitutional. Section 11, Article XII, of the state Constitution, provides: 'Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.' The territorial limits of the authority of the board of county commissioners are co-extensive with the territorial limits of the county itself, and any tax levied by that board must be uniform upon the same class of subjects throughout the county. In so far as the statute directs that the tax be levied upon property in a portion of the county only, it is invalid."

From this decision it is apparent that if Chapter 189 above had attempted to provide that the tax to redeem the funding bonds issued thereunder should be levied upon county property, not including that within the territory supporting a District High School, it would have been unconstitutional under Section 11, Article XII, of the Constitution of Montana. Chapter 189 properly provides for a tax levy upon the entire taxable property of the county to retire the bonds therein authorized.

The warrants authorized to be issued in anticipation of the funding thereof are specified in the Act, and are limited to the current expenses of the High School for the completion of the school year of 1920-1921. Their amount is expressly restricted to the limitations of the Constitution.

The County Commissioners, prior to the enactment of Chapter 189, had power to fund outstanding indebtedness of the county (Chap. 32, Laws of 1915). Chapter 189 merely applies that power to the outstanding indebtedness of the County High School, which is as much a county indebtedness as that of outstanding county general warrants, and gives authority to the Commissioners to issue bonds for funding county warrants of County High Schools for the purposes enumerated in the Act.

If the warrants to be funded under Chapter 189 are valid, the bonds would likewise be valid, and if the warrants are of the character and for the purpose specified in said Chapter 189, I am of the opinion that they would be valid.

It is, therefore, my opinion that Chapter 189, supra, is constitutional, and that warrants issued as provided for by said Act are valid, and that bonds subsequently to be issued, under the provisions of said Act, for the funding of such warrants, would be valid.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.