State Educational Bonds—Power of State Board of Education and State Board of Examiners—Use of Funds Derived from Sale of Educational Bonds.

The State Board of Examiners and the State Board of Education may in their discretion employ the proceeds of sales of educational bonds for the purchase of a building with the lot upon which it is situated, when adapted to University purposes, in lieu of the construction of a new building.

Edward C. Elliott, Esq.,
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My dear Chancellor Elliott:

You have submitted for my opinion the question, "Whether it is legal for the State Board of Education and the State Board of Examiners to purchase for the benefit of the State University, certain houses and lots to be included in the ultimate campus plan of the University, using for the purchase of said houses and lots, moneys derived from the proceeds of the sale of the State Educational Bonds authorized under the provisions of Initiative Measure No. 19." You have stated that the buildings are adapted, with some remodeling, to University purposes.

Section 1 of Initiative Measure No. 19, passed by a vote of the people in November, 1920, page 701 of the Laws of 1921, provides in part as follows:

> "That the State Board of Examiners of the State of Montana is hereby authorized, empowered and directed to issue bonds in the name of the State of Montana, in an amount not exceeding Five Million Dollars ($5,000,000), in excess of the Constitutional limitation of indebtedness and over and above any bonded indebtedness heretofore incurred or created and for which the State of Montana is now obligated, the money derived from the sale of said bonds to be used for the purpose of constructing, repairing and equipping necessary buildings at the several educational institutions of the State of Montana * * *"

The phrase "for the purpose of constructing, repairing and equipping necessary buildings" occurs in the title and throughout the Act wherever the purpose for which the money is to be raised or used is set forth.

The question to be decided is, therefore, whether the word "construction" is sufficiently broad to include the purchase of buildings that may be adapted to University purposes with the lots upon which the buildings stand.

The meaning of the word "construct" has been many times adjudicated in connection with public enterprises. It has been held to have the meaning of the word "provide" (Seymour v. City of Tacoma, 32 Pac. 1077), and it has been held in connection with bond elections, and otherwise, that the "construction" of water-works, electric light plants and public works includes their acquisition where the same have already been constructed.

In the case of Ostrander v. City of Salmon (Idaho), 117 Pac. 692, 695, the following language was used:

> "It is contended by the appellant that the municipality had no legal authority to purchase waterworks already constructed, or make the same a part of the municipal water system. This argument is based upon the provisions of subdivision 1, section 2315, Rev. Codes: 'To provide for the construction and maintenance of necessary waterworks and supplying the same with water.' It is urged that the word 'construction' as used in this subdivision will not authorize a municipality to purchase works already constructed. We think it was not intended by the Legislature, by the language thus used, to prohibit a municipality from purchasing waterworks already constructed, and to make the same all or a part of a general water system for such municipality. The very fact that the municipality is authorized to provide for the construction and maintenance of necessary waterworks implies authority to purchase works already constructed, and to make the same all, or a part of, a general system of waterworks."

To a similar effect are State ex rel. Edwards v. Miller, 96 Pac. 747, and State v. Allen, 82 S.W. 103.

The question arises in connection with the lots upon which the buildings stand, whether, under the terms of the measure, any land whatsoever may be acquired with the proceeds of the bonds dedicated to the purpose of construction, and this leads to the inquiry, just what dedication did the voters necessarily have in mind when a majority of them voted in favor of the "construction * * * of buildings?"

Ordinarily, if the proposition were assented to that a certain sum might be devoted to the construction of a building, the acquisition of land upon which to construct it would be implied. A building cannot be built without land upon which to build it, and the acquisition of the necessary land is presupposed as an integral part of the enterprise in connection with the construction of a building. And in voting for the bond issue in question can it be said, from the ordinary usage of the language of the measure, that the voters had in mind only the construction of edifices upon land, to the exclusion of the acquisition of such land as might be required? Did they necessarily know, or think, that the institutions already had the land required for the proposed buildings? This conclusion does not seem neces-

sarily to follow, but the conclusion to be reached from the words used in the measure, and from the known incidents of the construction of buildings, is rather that the voters meant to authorize the purchase of whatever was necessary to the construction of buildings for University purposes, including necessary land.

In the case of Yegen v. County Commissioners of Yellowstone County, 34 Mont. 79, a question not dissimilar to that here presented was before our Supreme Court. In that case a law had been passed authorizing municipal or county authorities to provide detention hospitals. The opinion, at page 33, reads in part as follows:

> "While these sections do not in express terms empower the boards of commissioners to acquire sites for the erection of detention hospitals for their respective counties, they do confer the power to build them, and, by the well-settled rule that every power necessary to execute the power expressly granted is necessarily implied, the power to acquire by purchase or otherwise suitable sites for these hospitals is necessarily implied; for it would be idle to say that the boards have power to erect suitable buildings for the expressed purpose, and then say that they have no power to proceed because there is no express grant of power to purchase suitable sites for them."

See, also, Morse v. Granite County, 44 Mont. 90.

In the case of State ex rel. Horsely v. Carbon County, 114 Pac. 522, while the express question here involved was not at issue, the court used the following language:

> "A bridge across the streams in the country in question without some kind of a highway would be useless. A highway without bridges over the streams would be impracticable. Both are but parts of one general object. To say the purpose here was a union of two separate and distinct objects, one might as well say that a stated purpose to purchase a site for a specified sum for school purposes, and to erect a school building thereon for another specified sum, contained, or related to, two separate and distinct objects or purposes and proposed two separate appropriations for them, which would appear to be groundless."

It is therefore my opinion that when, in the discretion of the Board of Examiners and the Board of Education, a building and the lot upon which it is situated are adapted to University purposes and the building is such as is contemplated to be constructed according to the terms of Initiative Measure No. 19, and can be acquired to the advantage of the University, the proceeds of sales of bonds authorized by said measure may properly be used in the purchase of such building and lot, in lieu of the construction of a new building.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.