

Warrants—School Districts—Trustees—Bonds—Laws.

Chapter 140 of the acts of the twenty-first legislative assembly does not authorize school trustees to issue warrants in excess of the available funds of the district and of the amount of taxes levied for the school year ending June 30, 1929.

The provisions of said chapter relating to the issuance of bonds to fund warrants outstanding July 1, 1929, are unconstitutional, said provisions not being embraced within the subject expressed in the title of the act as required by section 23, article V of the constitution.

I. M. Brandjord, Esq.,
Commissioner of State Lands,
Helena, Montana.

May 7, 1929.

My dear Mr. Brandjord:

You have requested my opinion as to the validity of Chapter 140 of the Acts of the Twenty-first Legislative Assembly of Montana, the title to which reads as follows:

“An act authorizing the board of school trustees of any school district to issue warrants in excess of the available funds of the district and in excess of the amount of taxes levied by said district for the current school year and not yet collected, and to authorize such boards of school trustees to issue bonds for the purpose of funding all indebtedness represented by bonds outstanding on July 1, 1929.”

The legislation contained in this chapter had its origin in House bill 198 and said bill as introduced contained the same title that it now bears. During its career in the legislature both the title and the body of the act underwent important changes as will hereinafter appear. Finally, the title was restored to its original form but not so with the body of the act.

When introduced said bill contained nine sections. Numbers 1 and 2 thereof read as follows:

"Section 1. All boards of school trustees are hereby given authority to issue warrants in excess of the available funds of the school district, and in excess of the amount levied by said school district for the school year ending June 30, 1929. Said warrants shall be issued only in payment of the current expenses of the schools within the school district for the completion of the school years of 1928-1929 and not for the purpose of increasing salaries, purchasing new equipment or increasing school facilities in any manner whatsoever.

"Section 2. The board of school trustees of any school district 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 district shall have a floating indebtedness incurred on or before July 1, 1929, for teachers' salaries, school supplies and other necessary expenses incurred in the maintenance of schools in such district represented by warrants heretofore issued, or hereafter issued for the school year ending June 30, 1929, as provided in Section 1 of this act, whether in excess of funds on hand and anticipated revenues or otherwise to fund such indebtedness and to issue either negotiable ten-year amortization bonds or ten-year serial bonds therefor and to pledge the credit and resources of the district for the payment of the principal and interest of such bonds."

The subsequent sections in said original bill related to the issuance form and sale of the bonds, the levy of a tax for the payment thereof, the usual repeal of conflicting acts, and the time when the same should take effect, and are substantially the same as they appear in the bill as finally enacted.

The bill when introduced in the House was referred to the committee on education, which committee on February 21, 1929 reported to the House that the bill "do not pass," which report was adopted. On February 22nd, the House reconsidered its action and rereferred the bill to the committee on education, which said committee on said day recommended that the bill "do pass" as amended by the committee. The amendment made by the committee consisted of striking out all of Section 1 of the bill and renumbering the remaining eight sections by making number 2 of the original bill Section 1 of the amended bill, and so on through the entire bill.

On February 25th the committee of the whole of the House amended Section 1 of the amended bill (Section 2 of the original bill) by striking out the year 1929 and inserting in lieu thereof the year 1928 and making the same amendment as to the year in the title of the bill. As thus amended in the committee on education and by the committee of the whole the bill was passed by the House on February 25th.

The amendments to the original bill eliminated from it the power contained therein to school districts to issue warrants in excess of available funds and taxes levied for the school year ending June 30, 1929, and confined the issuing of bonds to indebtedness incurred on or before

July 1, 1928. The proposal contained in the original bill to permit the issuance of warrants for the school year ending June 30, 1929, in excess of available funds and taxes levied, apparently did not meet with favor in the committee on education or in the House itself, and the whole bill was killed. It was subsequently amended as aforesaid with the objectionable feature of issuing warrants in excess of taxes levied eliminated, but Section 2 of the original bill (Section 1 of the final bill) the house failed to amend to meet the new situation, and the title was not amended to conform to the act as amended.

In the Senate the bill as passed by the House was referred to the committee on education and on March 4th the committee recommended that the bill be concurred in as amended. This committee amended the bill by changing the year back to 1929 in both the body of the act and the title, and as amended the bill was passed by the Senate and concurred in by the House. Section 1 of the original bill, which granted the power to issue warrants in excess of available funds and taxes levied for the school year ending June 30, 1929, was still left out of the bill. Section 2 of the original bill became Section 1 in the bill as finally enacted which accounts for the reference in Section 1 of the final bill to "Section 1 of this act," meaning Section 1 of the original bill, which was eliminated in the House.

The title of the bill as introduced and as finally enacted gave notice that the body of the act contained provisions authorizing the board of school trustees to:

- (1). Issue warrants in excess of the available funds of the district and in excess of the amount of taxes levied by the district for the current school year and not collected, and
- (2). Issue bonds for the purpose of funding all indebtedness represented by bonds outstanding on July 1, 1929.

Section 23 of Article V of the Constitution of the State of Montana provides:

"No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject, **which shall be clearly expressed in its title**; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

As to the purpose of this provision our Supreme Court has said:

"The purposes of the clause of the constitutional mandate that the subject of a bill shall be clearly expressed in its title, have been considered and defined by this court in *State vs. Mitchell*, 17 Mont. 67, 42 Pac. 100; *Jobb vs. County of Meagher*, 20 Mont. 424, 51 Pac. 1034, and the authorities cited in these cases. Briefly summarized they are: To restrict the legislature to the enactment of laws the objects of which legislators and the public as well may be advised of, to the end that any who are interested, whether as representatives or those represented, may be intelligently watchful of the course of the pending bill.

The limitation is likewise designed to prevent legislators and the people from being misled by false or deceptive titles, and to guard against fraud in legislation by way of incorporating into a law provisions concerning which neither legislators nor the public have had any intimation through the title read or published."

State vs. Anaconda Copper Min. Co., 23 Mont. 498, 59 Pac. 584;

State ex rel. Holliday vs. O'Leary, 43 Mont. 157, 115 Pac. 204.

The subject of the legislation contained in the body of the bill must be that expressed in the title; otherwise the purpose of the bill required by the Constitution is not served. While the title need not set forth all of the details, qualifications and limitations contained in the body of the act relating to the subject expressed in the title, yet the title must be such as will fairly direct the minds of the legislators and the public generally to what the proposed legislation is and it must not be deceptive or misleading.

"If a title fairly indicates the general subject of the act, is comprehensive enough in its scope reasonably to cover all the provisions thereof, and is not calculated to mislead either the legislature or the public, this is a sufficient compliance with the constitutional requirement. Generality or comprehensiveness in the title is no objection, provided the title is not misleading or deceptive and fairly directs the minds to the subject of the law in a way calculated to attract the attention truly to the matter which is proposed to be legislated upon." (Evers vs. Hudson, 36 Mont. 135, 92 Pac. 462).

As to the first power of which the title gave notice, that is, the authority of the board to issue warrants in excess of available funds and of taxes levied and not collected, the body of the act contains no direct legislation granting such authority. Section 1 of the original bill containing this power was stricken out. It might be argued that the grant of power to issue bonds to take up warrants issued, including warrants issued after the passage of the bill and in excess of funds on hand and anticipated revenues, is a grant by implication to issue the warrants themselves. Construction will never give rise to a power by implication where that power is denied by an express existing statute. Chapter 82 of the Session Laws of the Nineteenth Legislative Assembly, amending Section 964 R.C.M. 1921 relating to warrants issued by school trustees, expressly provides:

"Such warrants shall show for what purpose the money is required, and no such warrants shall be drawn unless there is money in the treasury to the credit of such district; provided that school trustees shall have the authority to issue warrants in anticipation of school moneys which have been levied, but not collected, for the payment of current expenses for schools, but such warrants shall not be drawn in any amount in excess of the sum already levied * * * ."

This statute is a direct pronouncement of the legislature to the effect that the power to issue warrants by school districts in excess of taxes levied and not collected is forbidden. Section 1 of the original bill was in direct opposition to this statute insofar as the remainder of the school year ending June 30, 1929, was concerned, and by the refusal of the legislature to enact said Section 1 of the original bill as part of the act finally enacted the legislature refused to withdraw the restraints placed upon school trustees as provided in said Chapter 82 of the Session Laws of the Nineteenth Legislative Assembly. The legislative history of an act is a proper aid to construction. (*Melzner vs. Northern Pac.* 46 Mont. 179; *California Jurisprudence*, Vol. 23, 773).

And this history as above detailed, negatives any idea of the intention of the legislature to grant to school trustees the power to issue warrants for the school year ending June 30, 1929 in excess of available funds and taxes levied but not collected. To hold that the act as finally enacted grants by implication to school boards the power to issue said warrants would be to give indirectly to the statute an effect which was directly denied by the legislature. It would have the effect of reinserting into the bill Section 1 of the original bill which the legislature refused to enact as part of the law.

Furthermore, to hold that House bill 198 as finally enacted by implication authorizes the board of school trustees to issue warrants in excess of taxes levied but not collected would be to say that an express statute may be repealed by implication from the terms of another statute when the conflict between the two arises, not by express words but by implication only. Repeals by implication are based upon direct and irreconcilable conflict in statutes and no implication of repeal will be based upon an implication of conflict. The express statute will govern.

An implication of power in the case of school trustees will only arise where the exercise of such power is necessary to carry into effect a power expressly granted. In this case it is not necessary to imply a power to issue warrants in excess of available funds and taxes levied but not collected for the school year ending June 30, 1929 in order for the board to exercise the power of bonding granted by the act if the said act were constitutional in other respects. The board would have authority to issue bonds in accordance with the terms of the act to take up warrants issued before the passage of the act as well as warrants issued thereafter but within the amount of taxes levied and not collected. This would avoid the conflict with said Chapter 82 of the Nineteenth Legislative Assembly. It is the duty of the court to reconcile and harmonize statutes wherever possible in order that the provisions of each may be given effect as far as possible without transgressing those of the others.

Jobb vs. County of Meagher, 20 Mont. 425;

State ex rel. Wynne vs. Quinn, 40 Mont. 472;

State ex rel. Ewald vs. Intoxicating Liquors, 71 Mont. 79.

It therefore appears that there is nothing in said Chapter 140 of the acts of the Twenty-first Legislative Assembly which authorizes the

board of school trustees to issue warrants for the school year ending June 30, 1929 in excess of available funds and taxes levied but not collected for said year; that that part of the title to said act giving notice of such power should have been eliminated when Section 1 of the original bill was stricken out by the House, and that that part of Section 1 of the chapter (Section 2 of the original bill) which refers to the issuance of warrants after the passage of the act for the school year ending June 30, 1929, "as provided in Section 1 of this act, whether in excess of funds on hand and anticipated revenues or otherwise," should likewise have been stricken out when Section 1 of the original bill was eliminated, as it refers entirely to the provisions of said discarded section. This conclusion is arrived at by applying well settled rules of statutory construction and by the legislative history of the act itself.

We will now consider the second power mentioned in the title of the bill, to-wit, the authority to issue bonds to fund the indebtedness of the school districts represented by bonds outstanding July 1, 1929. As the object of the title is to give notice to the legislators, and the public generally, of what is legislated upon in the body of the bill, the notice derived from this particular title was that the legislation in the bill was upon the subject of granting to school boards the authority to issue bonds to fund the bonds of the district outstanding on July 1, 1929. The body of the act contains no legislation whatever upon this subject, but it does legislate upon the subject of school districts issuing bonds to fund indebtedness represented by warrants outstanding on July 1, 1929. It would have been competent for the legislature to have stated in the title that the bonds were to be issued to fund the outstanding indebtedness of the district on July 1st and this would have supported the legislation contained in the bill. However, if the legislature inserts in the title of a bill restrictive clauses the body of the act must conform to the restrictions contained in the title.

People ex rel. Corscadden vs. Howe (N.Y.) 69 N.E. 1114;
Cahill vs. Hogan (N.Y.) 73 N.E. 39;
Cooley Constitutional Limitations (8th Ed.), 310;
State vs. Bradt (Tenn.), 53 S.W. 944;
First Nat. Bank vs. Smith (Ala.), 117 So. 38;
Fidelity Ins. Co. vs. S. Val. R. Co. (Va.), 9 S.E. 759.

In this case the legislature gave notice by the title of the bill that the whole indebtedness of the district was not to be funded by the bonds to be issued but that only a particular part thereof was to be so funded, to-wit, the bonded indebtedness outstanding. This excluded warrant indebtedness and any and all other kinds of indebtedness except indebtedness represented by outstanding bonds. Notice of authority to issue bonds to fund outstanding bonded indebtedness is not notice of authority to issue bonds to fund outstanding warrant indebtedness. Bonds issued to fund outstanding bonded indebtedness do not increase the bonded indebtedness of the district, whereas, bonds issued to fund outstanding warrants do increase the bonded indebtedness.

No doubt many persons would be willing for the district to issue

its bonds to take up outstanding bonds, as by so doing a lower rate of interest might be secured, but the same persons might be unwilling to convert the warrant indebtedness into bonded indebtedness and thereby increase the bonded indebtedness of the district and incur an obligation to pay yearly interest on the debt over a long period of time.

Had the proposition of authorizing the school boards of the school districts of Montana to issue bonds to fund outstanding warrant indebtedness been submitted to the people as an initiative measure under a title stating that the proposition was to authorize the issuance of bonds to fund outstanding bonds no one could logically contend that such a title fairly apprized the electors that they were voting upon a proposition to authorize the issuance of bonds to fund outstanding warrants. Such a title would be misleading and deceptive and give no notice whatever of the true subject of the proposed legislation. So with the bill during its career in the legislature. The legislators and the public generally were entitled to rely upon the integrity of the title, and doing so, they could not have been informed of the real subject legislated upon in the body of the bill, but would have been deceived and misled thereby. Whether they were in fact deceived is beside the question. Such a title does not comply with the Constitution. (State ex rel. Holliday, supra).

It is apparent that the legislature intended to use the word "warrants" instead of "bonds" in the title of the act. But this is only apparent from reading the body of the bill. The title itself does not disclose the error. A judicial finding that the legislature did so intend could not save the legislation from the condemnation of the Constitution, for the reason that the title serves its constitutional purpose when the bill is being enacted, not when it is being construed. The notice to the lawmakers and the public is obtained from the title itself, not from the contents of the bill, and the deception caused by the error is not cured by the discovery of the error through an analysis of the body of the act after the process of legislation is ended.

I am therefore of the opinion, for the reasons hereinabove stated, that said Chapter 140 of the acts of the Twenty-first Legislative Assembly of Montana does not confer upon school boards the authority to issue warrants in excess of available funds on hand and taxes levied but not collected for the school year ending June 30, 1929, and that its provisions relating to the issuance of bonds to fund warrants outstanding July 1, 1929 are null and void due to the fact that Section 23 of Article V of the Constitution of Montana was not observed in the enactment of the bill.

Very truly yours,

L. A. FOOT,
Attorney General.

By L. V. Ketter, First Assistant.