Opinion No. 123

Constitutional Law—County Commissioners—Poor.

HELD: Sec. 5, Art. XIII of the Constitution does not prohibit the incurring of an indebtedness or a liability in excess of $10,000 for the poor by the County Commissioners without the approval of the electors of the county.

March 22, 1933.

You have submitted the following facts and question: "The county commissioners have expended the tax levy in the support and aid of the poor. In other words, they have depleted the poor fund which, of course, includes old age pensions and mothers' pensions. In addition, they have created an emergency in the sum of $10,000.00, which sum is almost exhausted. Can the board of county commissioners create another emergency in the sum of $10,000.00 to be added to the emergency poor fund?"

In other words, the legal question involved, as you have interpreted it in the opinion you have submitted, is whether county commissioners may incur an indebtedness or liability in excess of $10,000 for the poor of the county without thereby violating section 5, Article XIII of the Constitution, which provides: "No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars ($10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law."

Section 5 of Article X of the Constitution provides: "The several counties of the state shall provide as may be prescribed by law for those inhabitants, who, by reason of age, infirmity or misfortune, may have claims upon the sympathy and aid of society."

Section 4465 R. C. M. 1921 as amended by chapter 54, Laws of 1927, in defining the powers of the county commissioners, recites in subdivision 5 thereof: "To provide for the care and maintenance of the indigent sick or the otherwise dependent poor of the county * * *."

By constitution, as well as by legislative enactment, the power and duty has been placed upon counties to provide for the poor. This question, so far as we have been able to determine, has not been directly passed upon by the supreme court. It has, however, been considered by our court in connection with a similar question in Panchot v. Leet, 50 Mont. 314, 146 Pac. 927. Justice Sanner in that case expressed himself very clearly in the following language:

"A dismal picture is presented of the confusion which will ensue if the approval of the electors must be had every time the county proposes to expend $10,000 or more; and, as an example of such confusion, it is said: 'Assuming the statement made by the press to be true that Silver Bow expended last year more than $100,000 on her poor, then it must be that such expenditure was unlawful, unless it followed upon a vote of the people, which probably did not take place.' The only confusion suggested by this is a confusion of thought; for it is perfectly obvious that the distribution of various amounts for the relief of various indigent persons, even though the aggregate exceed $10,000 taken from the county poor fund, is in nowise analogous to the expenditure of a sum certain for the single purpose of erecting a public building. **The first is a distribution, founded on a duty expressly imposed, to meet an ever-present condition encountered in the regular and normal functioning of the county;** the second is an expenditure, founded on a liability for a single, occasional purpose, forbidden under certain conditions."

In a later case (State ex rel. Cryderman v. Wienrich, et al. 54 Mont. 390, 170 Pac. 942), our court had occasion to consider the opinion expressed by Justice Sanner in the case of Panchot v. Leet, and Justice Sanner again, in discussing a similar question, said on pages 398-399:

"That the incurring of an indebtedness, whether by bonds or warrants, for the particular object contemplated by this act is a single purpose may not be gainsaid, even though, as pointed out in Panchot v. Leet, 50 Mont. 314, 321, 146 Pac. 927, **the aggregate of disbursements to the general poor cannot be so regarded."**

The opinion of the court in Panchot v. Leet, has been referred to in a number of opinions by the Attorney General. See opinion of S. C. Ford, Volume 8 Opinions of Attorney General, page 149, wherein the Attorney General said: "On the other hand, the expenditure of more than $10,000 in any one year for the care of the county poor is not the incurring of an indebtedness or liability for a single purpose." See also Volume 6 Opinions of the Attorney General, page 77, where D. M. Kelly, the Attorney General, recognized and quoted this opinion of the Supreme Court.

There seems to be a disagreement among the courts in the interpretation of similar constitutional provisions, as appears from 15 C. J. p. 578, Sec. 280. It will be observed therefrom that a number of courts have taken the same view as Justice Sanner. The text writer there states the law as follows: "In other jurisdictions, however, such limitations have been held to apply only to debts and liabilities voluntarily created and not to necessary county expenses or compulsory obligations." In support thereof he has cited a number of cases including Panchot v. Leet, supra.

In Rauch v. Chapman, (Wash.) 48 Pac. 253, the court said:

"We are constrained to rule that the constitutional limitation of county indebtedness in section 6 of article 8 of our constitution does not include those necessary expenditures made mandatory in the constitution, and provided for by the legislature of the state, and imposed upon the county."

The Oregon Supreme Court in Grant County v. Lake County, 17 Or. 453, 21 Pac. 447, held:

"Counties do not create all the debts and liabilities which they are under; ordinarily such debts and liabilities are imposed upon them by law. A county is mainly a mere agency of the state government,—a function through which the state administers its governmental affairs,—and it has but little option in the creation of debts and liabilities against it. It must pay the salaries of its officers, the expenses incurred in holding courts within and for it, and various and many other expenses the law charges upon it, and which it is powerless to prevent. Debts and liabilities arising out of such matters, whatever sum they may amount to, cannot in reason be said to have been created in violation of the provision of the constitution referred to, as they are really created by the general laws of the state, in the administration of its governmental affairs."

The Supreme Court of Louisiana, construing the inhibition in the above section upon a claim arising for payment of expenses of indigent smallpox patients, which duty was imposed on the city by the state law, said: "The debt on which this judgment is founded is for current municipal expenses, and we have held that debts for such expenses do not fall under the restrictions imposed by the statute referred to." Laycook v. City of Baton Rouge, 35 La. Ann. 479.

Judge Brewer, in the case of Rollins v. Lake County, 34 Fed. 845, in construing a similar provision in the Colorado constitution, differed with the supreme court of that state, and held that the necessary expenditures imposed upon the county by authority of the state were not within the inhibition of the constitution.

In a more recent case in our own supreme court (State ex rel. Turner v. Patch, et al., 64 Mont. 565, 210 Pac. 748), the court had occasion to interpret and apply this section of the constitution to the expenditure of money for road purposes and therein held that the issuing of funding bonds to the amount of $104,000 to be exchanged for warrants issued for the construction, repair, improvement and maintenance of public roads and bridges over the entire road system of the county was not prohibited by this constitutional provision. We call attention to the reasoning of the court in that decision, particularly the last paragraph of the opinion. Assuming that the money is to be spent for the poor throughout the county as it would no doubt be spent, I am unable to satisfactorily distinguish the two cases. Applying the reasoning of the court in that case, it would seem that the expenditure of money for the poor is not for a single purpose.

It is pointed out in the above case, and held in Hefferlin v. Chambers, 16 Mont. 349, 40 Pac. 787 that if an ex-

penditure is for a single purpose, sums expended over a period of years or at different times, if aggregating more than $10,000, would be prohibited by the constitution. The result would be that no county could incur indebtedness or liability for relief of the poor when once the maximum of $10,000 had been reached, without a vote of the people.

Our Supreme Court in State v. State Board of Examiners, 74 Mont. 1, 238 Pac. 316, had under consideration a similar constitutional provision and it was in that case held that Section 2, Article XIII of the constitution, prohibiting the creation of a debt exceeding singly or in the aggregate with existing debts the sum of $100,000, unless authorized by the people at a general election, was not intended to apply to an issue of treasury notes to refund outstanding warrants issued for current state expenses. See cases cited on pages 21-23. See also the recent case of Tipton v. Erickson, et al., 93 Mont. 466, 19 Pac. (2d) 227.

In view of the foregoing opinions and decisions, I am of the opinion that the constitutional provision above referred to does not prohibit the incurring an indebtedness or a liability in excess of $10,000 for the poor by the county commissioners without the approval of the electors of the county.