

Opinion No. 158.

**Bonds—Funds—War Bonds—Postwar
Building and Constructing—Roads and
Bridges, Postwar Construction.**

Held: Funds realized from the sale of bonds to be used "after the termination of the war" cannot be used until a formal treaty of peace has been ratified, or by proper act of Congress or proclamation of the President.

May 21, 1946.

Mr. Raymond Shelden
County Attorney
Carter County
Ekalaka, Montana

Dear Mr. Shelden:

You have requested my opinion concerning the time funds realized from the sale of bonds may be used for the construction of roads and bridges.

There were three questions submitted to the electors November 7, 1944. One ballot provided for the issuance of bonds in the sum of \$96,000.00 "for the purpose of constructing one complete system of lateral and connecting highways as a postwar program, **to be constructed after the termination of the war.**" Another ballot provided for the issuance of bonds in the sum of \$64,000.00 "for the purpose of building and constructing, as a postwar program, **to be constructed and built after the termination of war,** a system of county bridges." The third ballot provided for the issuance of \$40,000.00 in bonds for the purchasing road equipment and there was no restriction as to the time for the use of the funds.

The resolutions of the board of county commissioners set out the ballots in full and also provided that the funds specified above would be used in a postwar building program.

The intention of the board of county commissioners must be gathered from the recorded acts of the board as the parol evidence rule has application to the resolutions of the board of county commissioners. In 29 Am. Jur. 1018, the text states:

"With but few exceptions, the authorities are in harmony in excluding evidence of a different fact from that recorded on the records of local legislative bodies, offered for the purpose of contradicting or altering such record."

The restrictions on the use of the funds must be found in the resolutions of the board, and such restrictions can not be explained by extrinsic evidence such as the statements of the commissioners who passed the resolutions.

The terms "postwar" and "after the termination of the war" fix the time when the funds realized from the bond issues so limited may be spent. In *Hamilton v. Kentucky Distilleries Co.*, 251 U. S. 146, Mr. Justice Brandeis, speaking for the court, said:

"In the absence of specific provisions to the contrary, the period of war has been held to extend to the ratification of the treaty of peace or the proclamation of peace."

In 67 *Corpus Juris* 429, the text states:

"War in the legal sense continues until, and terminates at the time of some formal proclamation of peace by an authority competent to proclaim it . . . War may come to an end by the simple cessation of hostilities, although this has been said to be not the normal course; but the mere cessation of actual hostilities does not terminate the war in the legal sense, until followed by formal proclamation or declaration of peace."

Our Supreme Court in *State ex rel. Mills v. Dixon*, 66 Mont. 76, 213 Pac. 227, held the first world war was terminated by the treaty of peace and not at the time of the cessation of hostilities.

From the above authorities, it must be concluded that the proceeds of the bond issues which were designated for use after the termination of the war may be used for construction purposes after the formal treaty of peace has been signed or proper act of Congress or proclamation of the President declaring peace.

It might be well to note our legislature provided for postwar building programs, and did not make the use of the funds dependent on the termina-

tion of the war, but on the termination of the war emergency. In other words, the legislature recognized the war emergency preceded the termination of the war and by enactment of provisions for determining the end of the war emergency made the funds available at an earlier date. (Chapters 69, 131 and 148, Laws of 1945.)

The \$40,000.00 realized from the bonds issued to purchase road equipment was not restricted as to time, and it may be immediately used to purchase such equipment and thus take advantage of the war surplus which is being sold by the United States government.

It is therefore my opinion that funds realized from the sale of bonds to be used "after the termination of the war" cannot be used until a formal treaty of peace has been ratified by proper act of Congress or proclamation of the President.

Sincerely yours,

R. V. BOTTOMLY,
Attorney General