

**School District, Bond Issue By—Bonds, of School District.
Chapter 2, Laws 1905, and the Laws 1901, p. 3
Compared and Construed.**

The act of 1905 confers upon a district a power not granted to it by the original act and brings within the operation of the statute a deficiency not contemplated by the original act, and as to such matter the amendatory statute must govern as to date.

Helena, Montana, August 28, 1905.

Hon. John P. Schmidt, Register, State Land Office, Helena, Montana.

Dear Sir:—I am in receipt of your favor of the 14th instant, transmitting, upon reference by the State Land Board, the transcript of proceedings and correspondence with reference to the proposed bond issue of School District No. 1 of Fergus County, for the purpose of securing money to pay existing indebtedness under the provisions of Chapter 2, laws 1905, and requesting investigation, consideration and opinion by my office for the guidance of the Board of Land Commissioners respecting its action with reference thereto.

The act of February 19, 1901, laws 1901, p. 3, consists of seven sections, each section providing in substance as follows:

Section 1. That whenever before the passage of this act any school district has been unable to collect taxes for the maintenance of the school, by reason of the law under which the tax was levied being in-

operative and have borrowed money to maintain the school, such district may levy a special tax to repay the money so borrowed. Section 2 provides the manner of levying such tax. Section 3 specifies the duty of the county treasurer and the school trustees with reference to such tax. Section 4 authorizes the trustees, when they deem it to the best interests of the district, in lieu of levying the special tax mentioned in Section 1, to issue and sell bonds to repay the money borrowed for the purposes named in Section 1. Section 5 confers upon the school trustees and the county commissioners the powers enumerated in Sections 1965 to 1969, inclusive, political code, with reference to said bonds. Section 6 repeals all conflicting laws. Section 7 provides that the act shall be in full force and effect from and after its passage and approval. Approved February 19, 1901.

The act of January 27, 1905, p. 2, amends Section 1 of this prior act, and provides, in substance: "Section 1. That whenever before the passage of this act the tax levied and collected in any school district" for the maintenance of schools have been insufficient for such maintenance, the trustees may borrow money to maintain the schools and may levy a tax to repay the money so borrowed. Section 2 of this act repeals all acts in conflict therewith, and Section 3 provides that the act shall be in full force and effect from and after its passage and approval. Approved January 27, 1905.

This latter act does not amend any part of the former act except Section 1, and it amends that by giving the trustees authority to borrow money in all cases where the tax is insufficient to maintain the school, in lieu of restricting this power on the part of the trustees, to cases where they have failed to make collection of the tax by reason of the law under which the tax was levied being inoperative. Both acts limit the power conferred upon the school trustees to deficiencies which arise before the passage of the act, the phrase, "whenever before the passage of this act" being used in both the original act and the amendatory act. The amendatory act makes no specific reference to the power of the trustees to issue bonds, but closes with the statement "by levying a tax therefor upon the taxable property in said district in the manner provided in the following sections."

The question arises whether the trustees, under these acts, or either of them, are given the authority to levy the special tax or issue bonds to cover any deficiency which may have arisen subsequent to the approval of the first act (Feb. 1, 1901) and prior to the approval of the second act, January 27, 1905.

Section 25, Article IV, constitution of Montana, provides that "No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be reenacted and published at length."

Section 292, Political Code, provides that where a section or a part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form, but the portions which are not altered are to be considered as having been the law from the time when

they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment.

Similar constitutional and statutory provisions were considered and construed in *Barrows v. Peoples Gas Light and Coke Co.* 75 Fed. 794. In that case a statute of Illinois, enacted in 1872, providing for the consolidation of certain corporations "now existing." In 1889 this statute was amended, and the phrase "now existing" was repeated in the amendatory act. It was contended that the phrase "now existing" should be construed with reference to the date of the amendatory act, but the court held that this phrase must be construed as referring to the date of the original act.

In 1872 the legislature of New York enacted a law providing for assessment for paving, etc. In 1874 this act was amended by inserting the clause "for work thereafter made," etc. The court in *Matter of Peugnet*, 67 N. Y. 441, said: "This amendment took effect from its incorporation into the original section and had no retroaction operation. (*Ely v. Holton*, 15 N. Y.) The word 'hereafter' used in the statute as amended must be construed distributively. As to the acts within the statute as originally enacted, it means subsequent to the passage of the original act; as to the acts brought within the statute by the amendment, it means subsequent to the time of the amendment."

See also,

1 *Suth. Stat. Construc.*, p. 444.

In examining the session laws under consideration, it will be noticed that the law of 1901 limits the power of the district to deal with a deficiency caused by the inability to collect a tax by reason of the law being inoperative, while the act of 1905 confers upon it the power to deal with a deficiency arising from the insufficiency of a tax collected. Hence, the act of 1905 confers upon the district a power not granted to it by the original act and brings within the operation of the statute a deficiency not contemplated by the original act, and as to such new matter the amendatory statute must govern as to date; hence, if the deficiency was caused in a manner contemplated by the amendatory act, and at a time anterior to the passage of such act and subsequent to the passage of the act amended, it is within the power of the school trustees to levy the tax or to issue the bonds.

It is true that the section of the original act amended does not specifically mention the issuance of bonds, neither does the amendatory act of 1905 make such specific mention. But this amendatory act does refer to "the following sections" in the same manner that Section 1 of the original act makes such reference; hence, the amendatory act by reference adopts all that part of the original act not amended. "The general rule has been stated, that clauses of a prior act adopted by reference take effect as fully as if repeated and re-enacted in the adopting statute."

26 *Am. & Eng. Enc. Law*, 714;

Kendall v. U. S. 12 U. S. 849;

Culver v. People, 161 Ill. 96;

Matter of Main Street, 98 N. Y. 444;

2 Suth. Stat. Construc. Sec. 405, (2nd Ed.)

Section 4 of the act of 1901 does not introduce a new or independent subject, but only provides an additional method of dealing with the general subject treated of in Section 1. It appears that these bonds were purchased by a Chicago firm, subject to the approval of their attorney, and after examination the attorney expressed doubt as to the authority of the district to issue bonds covering a deficiency which arose subsequent to 1901. It is probable, however, that the recent act of the legislature was not then considered, as that act was not passed until January 27, 1905, and it is possible that some doubt may exist as to the authority of the district. But the conclusions reached above are believed to be the law as it will be declared by our supreme court if the question should ever be submitted.

It appears from the record furnished that the meeting of the board at which it was determined to issue the bonds was held February 17, 1905, and that the bonds were to bear date March 1, 1905. The published notice is for the sale of bonds to be dated March 1, 1905. If for any reason it is desirable that the date of issue should be changed, it will be necessary not only to re-advertise but it will likewise be necessary for the school trustees, after giving proper notice, to hold another meeting and there take the same proceedings that were had at the February meeting. If, however, the district issues the bonds of the date named in the advertisement, no re-advertisement would be necessary, because the section of the statute (1963, Political Code) which by the terms of the act is to govern in the issuance and sale of bonds, confers upon the trustees the power to reject any bids and to sell said bonds at private sale if they deem it for the best interests of the district.

Under the facts, and the law governing same above referred to, I respectfully return to you all papers without recommendation, leaving you to decide the advisability of making purchase of said bond issue, or waiving your right in that respect.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.