

State Warrants, Limitation of Indebtedness—Current Expenses.

State warrants issued in payment of current expenses of the government and state institutions, drawn against specific appropriations for such purposes, are not debts within the meaning of the constitutional limitation of indebtedness. Cash on hand and taxes due for the fiscal year may be figured as cash in offset to the warrants issued.

Helena, Montana, Oct. 18, 1905.

Hon. J. H. Rice, State Treasurer, Helena, Montana.

Dear Sir:—Your letter of the 17th instant, enclosing a letter addressed to you by the Honorable B. F. White, of Dillon, Montana, in which you request an opinion on the legality of state warrants, referred to in such letter of Mr. White, received.

From the letter of Mr. White it appears that because this office rendered an opinion holding that the bonds issued for the purpose of erecting buildings at the various state educational institutions were unconstitutional and void that it is his intention to attack the legality of warrants issued by the State for the purpose of paying the current running expenses of the state and state institutions, from appropriations made therefor by the last legislative assembly.

That the opinion of this office regarding said bond issues has nothing whatever to do with the appropriations made by the legislature for the maintenance and payment of current expenses of the various state institutions and state officials, or of the warrants drawn against said specific appropriations, is so apparent that no comment thereon is necessary. However, as Mr. White, as a taxpayer, has seen fit to notify you that he considers warrants issued for said purposes state debts, within the meaning of the constitutional prohibition, and that he, as a taxpayer, will look to you and your bondsmen for any payments you make of such warrants, I will therefore cite you to the following law and authorities relating to the legality of said warrants, issued for the purposes above mentioned, in order that you may readily determine that his position is not well founded in authority of law or principle.

Section 2 of article 13 of the state constitution fixes the limit of in-

debtedness of the State, except in cases of war, to repel invasion or suppress insurrection, or where the law authorizing the same has been submitted to the people, at the sum of \$100,000.

Said section reads as follows:

"The legislative assembly shall not in any manner create any debt except by law which shall be irrevocable until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purpose to which the funds so raised shall be applied and provide for the levy of a tax sufficient to pay the interest on, and extinguish the principal of such debt within the time limited by such law for the payment thereof; but no debt or liability shall be created which shall singly, or in the aggregate with any existing debt or liability, exceed the sum of one hundred thousand dollars (\$100,000) except in case of war, to repel invasion or suppress insurrection, unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election."

Section 12 of Article 12 provides for the running expenses of the government for each fiscal year, and reads as follows:

"No appropriations shall be made or any expenditures authorized by the legislative assembly whereby the expenditures of the state during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure unless the legislative assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rate allowed in section nine (9) of this article, to pay such appropriation or expenditures within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state, or assist in defending the United States in time of war. No appropriation of public moneys shall be made for a longer term than two years."

In *State v. McCauley*, 15 Cal. 456, Chief Justice Field, under a constitutional provision similar to ours, in discussing the question as to whether warrants issued monthly in payment for the care of prisoners was a debt of the state and therefore illegal under the constitutional limitation, said:

"It constitutes one of the ordinary sources of the state's expenditures, and a law authorizing a contract for keeping the prisoners at a fixed price—the payment and the services being future acts—is no more in conflict with the Constitution than the law fixing the salaries of the Judges and other officers of the Government, and providing for their payment from the Treasury of the State. The eighth article was intended to prevent the State from running into debt, and to keep her expenditures, except in certain cases, within her revenues. These revenues may be appropriated in anticipation of their receipt as effectually as when actually in the Treasury. The appropriation of moneys, when received, meets the services as they are rendered, thus discharging the liabilities as they arise, or rather anticipating and preventing their existence. The appropriation accompanying the services operates in fact in the nature of a cash payment."

This decision has been affirmed and cited with approval in *People v. Pacheco*, 27 Cal. 176, and in *McBean v. City of Fresno*, 112 Cal. 107, and many other California decisions.

The supreme court of Iowa, in *Grant v. City of Davenport*, 36 Iowa 396, in discussing a similar constitutional provision said:

"From these illustrations, as well as from the plain and practical meaning of the language of the constitutional inhibition, the true rule and just interpretation is evolved, to-wit that where the contract made by the municipal corporation pertains to its ordinary expenses, and is, together with other like expenses, within the limit of its current revenues and such special taxes as it may legally, and in good faith intend to levy therefor, such contract does not constitute the incurring of indebtedness within the meaning of the constitutional provisions."

The supreme court of South Dakota, in *re State Warrants*, 6 S. D. 518, in discussing the identical point raised in the letter of Mr. White, and under constitutional provisions practically the same as the two sections quoted above, said:

"It would seem, therefore, that, both upon authority and principal, we should be justified in saying that appropriations for the assessed, but not yet collected revenues of the state, and the issuance of warrants in pursuance and in evidence thereof, is not the incurring of an indebtedness, within the meaning of Section 2, Art. 13, of the constitution.

At first thought, it may seem difficult to maintain that the issuing of an obligation to pay is not the incurring of an indebtedness; but as aptly said by the court in *State v. Parkinson*, supra, "similar language (prohibiting state indebtedness beyond a designated limit) in the constitutions of other states had judicial interpretation before the foundation or adoption of the constitution of the state, * * * and thus the legal presumption arises that the language was used with reference to such interpretation. Critically considered, it may constitute the incurring of an indebtedness; but it is not an indebtedness repugnant to the constitution, because its payment is legally provided for by funds constructively in the treasury. If the drawing of a warrant upon the state treasury is the incurring of indebtedness by the state, then the drawing of such warrant would violate the constitution, even if there was money in the state treasury to pay it, if the constitutional limit of indebtedness had been reached; for there must always be some time intervening between the drawing of the warrant and its payment, and during such time the indebtedness of the state would be increased beyond the constitutional limit. Such an interpretation of the constitutional limitation would obviously be too hypercritical to be practicable or reasonable. It being once established, as we think it is by the authorities already cited, that the revenues of the state, assessed and in process of collection, may be considered as constructively in the treasury, they may be appropriated and treated as though actually and physically there; and an appropriation of them by the legislature does not constitute the incurring of an indebtedness, within the meaning of Section 2, Art. 13."

The assessed valuation of the State of Montana for the year 1905 is

\$209,912,340. The legislative assembly, Chapter 69 laws 1905, provided a levy of two and one-half mills for state purposes upon all property of the state liable to taxation for the year 1905. The above levy on said valuation provides a revenue of \$524,780 for the year 1905 from taxation alone to which should be added fees of state officials and money received from licenses. On October 17, 1905, in addition to the money due from said levy of two and one-half mills, there was \$60,000 in cash in the general fund of the state, making a total of \$584,780, not including fees and license money unpaid and now due the state. As against this fund there were registered warrants on October 17, 1905, to the amount of \$550,395.75. These warrants were drawn and payable out of the various funds appropriated by the last legislature, and all of such appropriations were made in anticipation of the revenue to be received from said levy of two and one-half mills, mentioned above, and from fees and licenses. As was shown by the authorities cited above; warrants drawn on appropriations to meet current expenses and to be paid out of the current revenues for the year are not state debts within the meaning of the section of the constitution limiting the amount of state indebtedness.

It will be noticed from the figures set out above that the amount due from taxes for 1905 together with the cash now on hand, exceeds the amount of warrants registered by more than \$34,000. Furthermore, it is the general rule of law that the existing indebtedness of a state or county is ascertained by deducting the cash on hand and the amount of taxes levied for the fiscal year from the outstanding liabilities.

The supreme court of Washington, in *State ex rel. Barton v. Hopkins*, 14 Wash. 62, in discussing the question as to whether the county had exceeded its limit of indebtedness, said:

"Hence, the material questions involved are, (1) can the cash assets of the county be deducted from the outstanding indebtedness for the purpose of determining its amount within the meaning of the constitutional provision upon the subject? and (2) can the amount of the tax roll for the current year and the amount unpaid upon those of prior years be treated as a part of such cash assets?

"The first question has been so often decided in the affirmative that it is not necessary for us to say more than that such is the established rule in all of the states. * * *

"Under constitutional provisions of substantially the same force as ours, the most of the states have adopted some rule under which the revenues to be collected for the current year could be made available prior to their collection."

After citing numerous cases, the court said further:

"Cases from other states to the same effect might be cited, and no case holding to the contrary has been called to our attention. We, therefore, feel compelled to agree with the contention that the amount of the taxes assessed for county purposes upon the tax roll for the the current year must be deducted from the outstanding county indebtedness to determine its amount within the meaning of the constitutional prohibition."

Under the above construction of the law you are authorized to deduct

from the amount of warrants registered, or other liabilities of the state, the amount of taxes due for the year 1905 and also the cash now on hand, and as the amount due from taxes and the cash on hand exceeds the warrants now registered it necessarily follows that there is no indebtedness such as is contemplated by the constitutional provisions.

Mr. White's letter to you shows that he has misunderstood the opinion given by this office to you relating to the bond issues of state educational institutions. He seems to be laboring under the impression that under such opinion we have held that the bonds issued in the name of the several state institutions are a "direct liability of the state," and that therefore the state is now far in excess of the limit of indebtedness fixed by the constitution. This is not the effect of the opinion given to you upon these bond issues. Our position is that all of said bonds are unconstitutional and void for the reason that the state institutions cannot lawfully issue bonds in their own name, and that as the question of issuing the bonds was never submitted to a vote of the people that they are wholly void as bonds of the state; therefore, such bonds cannot be considered in any estimate made for the purpose of determining the amount of the state's indebtedness at this time.

Several decisions have been rendered by the supreme court of this state relating to the limit of indebtedness of towns and cities. All these cases construe contracts against cities extending over a period of years and which are governed by other sections of the constitution than those quoted above, and therefore are not applicable to the question herein considered.

You are therefore advised that warrants issued in payment of the current expenses of the state government and state institutions, drawn against the appropriations made by the legislature for the purpose of running the government and such institutions, are not debts within the meaning of the constitutional provisions; that the cash on hand and taxes due for the year 1905 may be figured as cash in offset to the warrants issued, and that therefore the state has not reached its constitutional limit of indebtedness and you are perfectly safe in paying warrants drawn against the various appropriations made by the last legislative assembly.

Yours very truly,

ALBERT J. GALEN,

Attorney General.