

Bonds. Deaf and Dumb Asylum, Validity Of. School for Deaf and Blind.

The "Deaf and Dumb Asylum," or the "Montana School for the Deaf and Blind" located at Boulder, Montana, is a State Institution of learning within the meaning of Section 12, Article 11, State Constitution, and the bonds heretofore issued against the land granted by the Montana Enabling Act "for the establish-

ment of a Deaf and Dumb Asylum" are void, as such bonds fall within the same class as the State Normal School Bonds heretofore held void by the supreme court of Montana.

Helena, Montana, March 3rd, 1906.

Hon. Joseph K. Toole, Governor, Helena, Montana.

Dear Sir:—Your request for an opinion of this office, bearing date January 29th, 1906, with reference to the validity of the Deaf and Dumb Asylum forty-five thousand dollar bond issues, has been held by us until now before giving you opinion because we were desirous of waiting final decision by the supreme court in the case of State vs. Rice, involving the Normal School bond issue.

After careful consideration of the question presented, and of what you say concerning the subject, we are constrained to the opinion that the Montana School for the Deaf and Blind at Boulder, Montana, is a state institution of learning, and the said bond issue void, and, in support of our position we give you the following:

Sec. 17 of the Montana Enabling Act makes a grant of fifty thousand acres of land "for the establishment of a deaf and dumb asylum."

Under the act of the legislature, laws of 1897, p. 94, bonds to the amount of \$45,000.00 bearing interest at six per cent have heretofore been issued against this land grant. These bonds are outstanding and the interest thereon is now due. Is the State Treasurer authorized to pay this interest, or do these bonds fall within the same class as the Normal School which have been, by our supreme court, declared void?

State ex rel Haire v. Rice, Treasurer, 83 Pac. 874.

In deciding the questions as to the validity of the Normal School bonds, the supreme court held that Sec. 11 of the Enabling Act did not apply to the land grants made by Sec. 17 of that act. The use of the term "educational purposes" in said Sec. 11 cannot, therefore, have any bearing upon this question. But the court did hold that under Sec. 12, Art. 11 of the State Constitution, funds of state institutions of learning could not be pledged as security for the payment of indebtedness, and that bonds which pledged the proceeds received from the sale of lands granted for state institutions of learning are void. The only question then is, is the deaf and dumb asylum located at Boulder, Montana, a state institution of learning within the meaning of Sec. 12, Art. 11 of the State Constitution?

To determine this question, the law creating and governing this institution must be looked to. Secs. 2330 to 2371 inclusive, of the Political Code, deal with this subject. The name of this institution is variously designated as "The Montana Deaf and Dumb Asylum" (Sec. 2330), "The State Deaf and Dumb Asylum" (Sec. 2360), "Montana School for the Deaf and Blind" (Session Laws 1903, p. 10). The name, however, is immaterial, as the purpose for which the institution is created and for which it is used must be looked to to determine its real character. Sec. 2331 of the Political Code defines the object of this institution to be "The object of said school shall be to teach the English language to all the deaf and dumb children of the state, and to furnish all children who are de-

barred from the public schools by reason of, deafness, dumbness, blindness or feeble-mindedness, with at least an ordinary public school education, etc." The management and control of the institution is placed under the jurisdiction of the State Board of Education.

Sec. 2342 prescribes the qualification of students as follows:

"The Board of Trustees * * * shall admit into the school all deaf, dumb, blind and feeble-minded residing in the State of Montana, between the ages of six and twenty-one years, who are not unsound of mind or dangerously diseased in body, or of confirmed immorality or incapacitated for useful instruction by reason of physical disability. All pupils of said school shall be entitled to ten years of attendance," etc.

Sec. 2345 as amended by the act of February 24, 1903, p. 36, makes it the duty of school district clerks of each county in the state to annually report to the county superintendent of schools on or before the 20th day of September, the names, ages and postoffice addresses, and the names of parents or guardians of every deaf or blind, or feeble-minded person between the ages of 5 and 21 years residing in the school district, and "the county superintendent of schools shall, on or before the 1st day of October of each year, send a complete list of the names, ages and addresses of all persons in their county to the superintendent of the school for the deaf and blind, Boulder, Montana."

It is very apparent from these provisions of the statute that it was the intention of the legislature that this institution shall be a state institution of learning, and not merely an "Asylum," as that term is commonly understood. But the legislatures of the state have gone still further and have given us a specific construction of this law as to its purposes and application with reference to educational institutions of the state. The act of Feb. 11, 1903, laws of 1903, p. 10, provides: "That the educational institution of the State of Montana located at Boulder, Montana, now named and known as the "Montana Deaf and Dumb Asylum," shall no longer be known as the Montana Deaf and Dumb Asylum, but shall hereafter be known as the "Montana School for the Deaf and Blind," and shall be named, designated and known as the "Montana School for the Deaf and Blind."

If this institution is merely an "Asylum," that is, a place of refuge where those afflicted with deafness, dumbness and blindness may be properly cared for, why is admission limited to those between the ages of 6 and 21 years, and limited also to those who are capable of receiving useful instruction and the period of attendance fixed at ten years? It is very apparent that this is a state institution of learning, and it is the only institution of learning within the state where children who are so unfortunate as to be afflicted in the manner above stated can be taught, and it is also apparent that the funds of this "state institution of learning" should receive the same protection and care as the funds of any other state institution of learning, for the object and purpose of the school is exactly the same as that of the state normal school, the state university, or any other school, the sole purpose being to educate the child and make of him a useful citizen. This same question is discussed at some length where a like conclusion is reached, in *Curtis v. Allen*, 43 Neb. 184; *Ameri-*

can Asylum v. Phoenix Bank, (Conn.), 10 Am. Dec. 112.

The following cases also have some bearing upon the subject:

Scott v. Flowers, (Neb.) 84 N. W. 81; Ex Parte Nichols, (Cal.) 43 Pac. 9; In re Sanders, (Kan.) 36 Pac. 384; 7 Words & Phrases, 6343, under "Schools."

Furthermore, it will be noticed that the grant named in Sec. 17 of the Enabling Act is "for the establishment of a deaf and dumb asylum, fifty thousand acres." If, under the terms of this grant the state only has the authority to establish an asylum or refuge for all persons afflicted with deafness and dumbness, then we have never complied with the terms of this grant, and those lands cannot be used for the maintenance of such an institution as the Montana School for the Deaf and Blind, and in that event these bonds are void as being an illegal diversion of the funds to a purpose not contemplated in the grant.

From these considerations, we are forced to the conclusion that the bonds issued for the deaf and dumb school came within the same class as the normal school bonds and are void, and that no part of the moneys received as the proceeds arising from the sale of the land, or from the interest or income therefrom, can be used for the payment of either principal or interest of these bonds.

Yours respectfully,

ALBERT J. GALEN,

Attorney General.