

**County Commissioners, Powers Of. Indebtedness, Limit of Warrants, Order of Payment. Interest on Warrants. County Warrants, Validating.**

1. County warrants issued for a single purpose in excess of ten thousand dollars, unless authorized by a vote of the electors, are void.
2. County warrants cannot legally be issued to pay interest on warrants previously issued.
3. Money received from sale of bonds for the construction of a certain bridge cannot legally be expended for any other purpose.
4. County warrants must be paid in the order of their registration.
5. An indebtedness in excess of ten thousand dollars for a single purpose incurred by a board of county commissioners may be validated by a vote of the electors.

Helena, Montana, Jan. 21, 1908.

Hon. George A. Horkan,  
County Attorney,  
Forsyth, Montana.

Dear Sir:—

I am in receipt of your favor of the 16th inst., in which you submit for the consideration of this office certain questions based upon a statement of facts therein made by you substantially as follows:

In 1904 a majority of the electors of Rosebud County, at an election held therefor, authorized the county commissioners to issue bonds in the sum of Forty-five Thousand Dollars, for the purpose of constructing a bridge across the Yellowstone River at Forsyth; that the bonds were never issued, but that the bridge was constructed and in payment therefor the commissioners issued county warrants, which warrants were duly registered and marked "not paid for want of funds"; that thereafter the holders of some of the subsequently registered warrants demanded that the commissioners cause to be issued to them other warrants in payment of the interest which had accumulated on their original warrants so issued and registered; that subsequently, and in the year of 1906, the electors of the county authorized the issuance of bonds in the sum of Forty Thousand Dollars for the construction of a bridge across the Yellowstone River at or near Myers in said county; that these latter bonds were issued and sold; that the money received therefor was placed in the bridge fund of the county against which fund the warrants heretofore referred to, or some of them, had been issued.

The questions you submit upon this statement of facts will be repeated and considered in their order.

1. "Are these county warrants so issued legal obligations against the county?"

Section V. Art. 13 of the State Constitution provides:

"No county shall incur any indebtedness or liability, for any single purpose, to an amount exceeding ten thousand dollars (\$10,000.00) without the approval of a majority of the electors thereof, voting at an election to be provided by law."

The proposition submitted to the electors, and to which they gave their approval, was the issuance of bonds, not the issuance of warrants. The bonds, if issued, would not be due for a number of years, while the warrants would be due as soon as there was money in the treasury to pay same. The bonds would not have the effect of immediately "tying up" the money in the treasury, so as to prevent the payment of current or necessary expenses, but would be paid from a sinking fund gradually accumulated for that purpose. The warrants, when registered, would have the effect of absolutely preventing the payment of money for any other purpose from the fund against which they were drawn until such warrants were paid, for the warrants are paid in the order of their registration (Sec. 4290 Pol. Code), and the two propositions are so different that it cannot be said that the electors gave their sanction to the issuance of the warrants or to the incurring of an indebtedness

in that form. The incurring of the indebtedness was authorized by the electors but it was only on the condition and with the understanding that such indebtedness should be evidenced by bonds due at some future time. Our court has given to this provision of the Constitution a very strict construction.

Hotchkiss vs. Marion, 12 Mont. 218; 29 Pac. 821.

Hefferlin vs. Chambers, 16 Mont. 349; 40 Pac. 787.

Hoffman vs. Gallatin, 18 Mont. 224; 44 Pac. 973.

Tinkle vs. Griffin, 26 Mont. 426; 68 Pac. 859.

See also Lewis vs. Sherman Co., 5 Fed. 269.

Chap. 10. Laws 1907, could not have the effect of legalizing warrants issued in violation of this provision of the Constitution, for such authority, under the terms of the Constitution, must emanate from the electors of the county and not from the legislature. Furthermore, this act of the legislature does not purport to legalize or validate warrants issued in excess of the constitutional limit of indebtedness.

We are therefore of the opinion that the authority to issue warrants in question did not exist, and that the same, as such, are not legal obligations against the county.

2. "Has the board of county commissioners authority to issue warrants in payment of the interest accumulated on such prior warrants, or to pay such interest in any manner, prior to the payment of the original warrants?"

County warrants are evidence of indebtedness against the county, but they do not become due, in the strict sense of that term, until there is money in the treasury with which to pay them. They are presented to the treasurer and by him endorsed "Not paid for want of funds," and are "thereafter paid in order of their \* \* \* registration" (sections 4250, 4290, 4353, Pol. Code, as amended by the Laws of 1899 at page 99).

No authority of law is given for the issuance of county warrants to pay interest accumulated on county warrants previously issued; this would be, in effect, the payment of compound interest. The board of county commissioners has no authority, except as given it by statute, and as the statute has never conferred such power or authority upon the board, none exists. The question is therefore answered in the negative, for, even if these warrants were valid, the county would have no authority to pay the interest thereon, either by the issuance of warrants or otherwise, prior to the payment of the original warrants.

3. "Can any of the money received by reason of the sale of the bonds issued for the construction of a bridge at Myers be used for the payment of these warrants, though same now appears from the records of the county treasurer to be in the general bridge fund of the county?"

The money raised for the construction of the bridge at Myers was raised for that specific purpose and cannot legally be applied to or used for any other purpose. Such money should, perhaps, have been deposited as a special fund, but the fact that it was put in the general fund does not divest it of its special character nor authorize its expend-

iture for any other purpose. The county board may order the treasurer to carry this money as a special fund, and while it is now credited to the general bridge fund, yet, it must be used only for the purpose for which it was raised, hence it cannot be used for the payment of warrants issued for other purposes.

4. "If the warrants issued for the construction of a bridge at Forsyth are legal, has the county treasurer authority to pay any subsequent warrants drawn against the bridge fund for current expenses or otherwise before the payment of the prior registered warrants?"

The answer to this question is found in the provisions of Sections 4250, 4290, 4353, of the Pol. Code, as amended by the laws of 1899, at page 99, which are to the effect that warrants must be paid in the order of their presentation and registration; hence the subsequent warrants cannot legally be paid until all prior warrants which had been presented for payment are satisfied.

5. "If, in your opinion, the warrants issued for the construction of the Forsyth bridge are invalid, is there any way of validating same?"

The electors of the county had the authority to authorize the incurring of this indebtedness (Sec. 4270 et seq. Pol. Code.) and it is a general principle of the law that a power which can authorize a thing to be done can ratify it after it is done.

"Where a proposition to incur unusual expenditures is required by statute to be submitted to a popular vote, warrants issued in payment of such expenditures are void, unless authorized by such vote or validated by a subsequent election."

11 Cyc. 536.

For cases in point see

Richards vs. Klickitat County (Wash.) 43 Pac. 647.

Williams vs. Shoudy, 41 Pac. 169.

The act of the commissioners in issuing these warrants may therefore be ratified, and such warrants validated, by the qualified electors of the county voting at a special or general election at which such question is submitted to them.

Very truly yours,

ALBERT J. GALEN,

Attorney General.