

County Commissioners, Authority Of. Bonds, Redemption Of. Warrants, Redemption Of.

A Board of County Commissioners has authority to issue bonds for the purpose of redeeming outstanding warrants in excess of the sum of Ten Thousand Dollars, without first submitting the proposition to a vote of the electors of the county.

Helena, Montana, March 22, 1907.

Hon. Frank P. Whicher,
County Attorney,
Red Lodge, Montana.

Dear Sir:—

I am in receipt of your letter of March 8th, in which you submit for the consideration of this office the following proposition:

“Has a Board of County Commissioners authority to issue bonds in excess of ten thousand dollars (\$10,000) for the purpose of redeeming outstanding warrants, without the approval of a majority of the electors of the county, ‘voting at an election to be provided by law.’”

In this connection you state that the county is behind in the payment of bills against the Bridge Fund, and that bonds to the amount of ten thousand dollars have already been issued, and that there are now about fifteen thousand dollars in warrants outstanding against the Bridge Fund.

By Sec. 5, Art. XIII of the State Constitution it is provided that: “No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars (\$10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law.”

This constitutional provision was construed by the Supreme Court of Montana in *Hefferlin v. Chambers, et al.*, 16 Mont, 349.

The powers of a board of county commissioners as enumerated in Sec. 4230, Political Code, are enlarged and extended by the provisions of Chaps. 40 and 41 of the Laws of 1905. Said Chap. 41 specifically provides:

“The Board of County Commissioners has authority to issue
* * * coupon bonds to an amount sufficient to enable
it to redeem all legal outstanding bonds, warrants or orders
* * * for the construction of necessary * * *

highways and bridges, not exceeding in the aggregate, including outstanding bonded indebtedness, five per centum," etc.

Under the provisions of the Constitution above cited and the decision of the Supreme Court in Hefferlin vs. Chambers, supra, a board of county commissioners cannot issue bonds or incur any indebtedness for any single purpose, which, with the indebtedness then outstanding, would exceed the sum of ten thousand dollars. But the issuance of redemption bonds "does not create any new indebtedness, and is not to be considered in determining the validity of the bonds as effected by the constitutional or statutory limitation of indebtedness."

21 Am. Eng. Enc. of Law, 37.

In Palmer vs. City of Helena, 19 Mont. 61, the Supreme Court said:

"This court in Hotchkiss vs. Marion, et al., 12 Mont. 218, held that the funding of an existing indebtedness by the issuance of bonds, did not create a new or additional indebtedness, but that the form of the liability of a county was only changed thereby."

It appears, therefore, that the question in the case which you state, for the Board to consider prior to issuing the redemption bonds, is whether or not the warrants now outstanding are themselves legal obligations against the county. If such warrants are legal obligations, then the Board under the authority granted by Chap. 41, Laws 1905, may change the form of evidence of such indebtedness by issuing bonds and taking up the warrants.

Yours very truly,

ALBERT J. GALEN,

Attorney General.