

School Districts, Bonds Of, Must Be Redeemable Prior to Maturity. School Bonds, Must Be Redeemable Before Maturity. Trustees of School Districts, Must Reserve Right to Redeem School Bonds Prior to Maturity.

Bonds of School Districts must be redeemable at some time prior to maturity, otherwise they are void, and the board of

school trustees must reserve this right to redeem.

Helena, Montana, June 11, 1910.

State Board of Land Commissioners,

Helena, Montana.

Gentlemen:—

Your favor of June 10th, stating that your board at its meeting on the 4th inst., made a bid of five per cent for the contemplated bond issue of school bonds of school district No. 1, Carbon county, in the amount of eleven thousand dollars, subject to the opinion of the attorney general as to the legality of the issue, and that you have received an acceptance of such bid, and enclosing transcript of proceedings for our approval, has been received.

In reply we will say that there is some doubt in our mind as to whether the proceedings had by the school board comply with Section 1003 of the Revised Codes, providing that the bonds shall be "payable and redeemable at a certain time." Under the resolution passed by the board authorizing the issuance of the bonds, and the notice of special bond election and subsequent proceedings, the bonds are made payable and redeemable in twenty years. In our opinion, under this provision, they are not redeemable at all, for in order to be redeemable they must be subject to payment before they become due.

In the case of *Carlson v. City of Helena*, reported in 102 Pac. p. 39, the court, in construing Section 3460 et seq., of the Revised Codes, which is in this respect in substance the same as Section 1003 et seq., of the Revised Codes, held that:

"The statute is mandatory in its provisions, both as to the term during which the bonds may run, and as to the requirement that the council must reserve the bond to redeem prior to maturity. The requirement in both these respects as a limitation upon the power to issue bonds, and disregard in either would render them void. The purpose of the limitation as to the option to redeem is made manifest by the provision of the preceding section of the statute (3469) for the accumulation of a sinking fund, as well as by the mandatory provision in the latter part of the section itself where it is made the duty of the treasurer after such bonds have become redeemable to call them for payment in numerical order as soon as the sum of one thousand dollars or more has been accumulated in this fund. Here is manifested, unmistakably, an intention by the legislature that after a reasonable time the sinking fund shall not be accumulated, but as fast as possible be applied to the payment of the debt and pro tanto discharged."

While the decision in the case of *Carlson v. City of Helena* was with reference to an indebtedness created by the city of Helena under the provisions of Sections 3454 to 3463 of the Revised Codes, and the question here under consideration is with reference to school bonds

provided for by Section 1003 et seq., the principle involved in each case, we think, is similar, and we believe that the bonds should be made redeemable at some specified date before maturity.

This would not necessitate another submission of the proposition to the voters, but would simply require that the school board should hold a meeting and rescind the resolution of April 6th and pass another resolution providing that the bonds shall be payable in twenty years and redeemable in some specified time before maturity, say ten, or fifteen years, or whatever time the board in its discretion may deem advisable and then readvertise for bids.

We deem this course advisable in order to obviate the question raised by the supreme court in the case of Carlson v. City of Helena.

Yours very truly,

ALBERT J. GALEN,

Attorney General.