

Bonds, Sale of County Refunding. Bonds, County Refunding to Be Sold at Par. Bids, Deductions Below Par Not Acceptable. Board of County Commissioners, Sale of Bonds By.

Where a board of county commissioners offers for sale an issue of refunding bonds they must be sold at not less than par and deductions in favor of the bidder for legal expenses, printing, etc., which reduce the bid below par, invalidate the bid. The entire issue must be used for purposes for which it is issued and expense of printing the bonds must be met out of moneys in the county treasury not otherwise appropriated. No charges for legal advice can be paid out of this fund as the board of county commissioners is entitled to the advice of the county attorney and attorney general.

Helena, Montana, November 17, 1910.

Mr. J. T. Vaughn,
County Attorney,
Big Timber, Montana.

Dear Sir:—

The questions submitted by you for my official opinion concerning the power and authority of the board of county commissioners of Sweet Grass county, with reference to the sale of \$85,000.00 4¼% refunding bonds, are here set out and answered in the order in which they were received over the telephone.

1. Can the board of county commissioners accept any bids made on the entire issue of \$85,000, but all providing that varying amount ranging from \$2,100 to \$3,300 be deducted from the bid to defray the costs of printing bonds, legal expenses, etc., such deductions to be made in favor of the bidder?
2. Has the board authority to sell the bonds to any of such bidders?
3. What limitations are imposed upon the board of county commissioners in expending money in the sale of bonds?

The first and second questions may be considered together. Section 2907 of the Revised Codes provides that the board may sell bonds authorized by this article and give notice by printed advertisement in some newspaper published in the county and one or more newspapers published in the city of New York for a period of not less than thirty days prior to the time said bonds are to be sold. The same section provides that sealed bids shall be received in accordance with the advertisement above mentioned and that the person offering the highest price for the bonds is entitled to receive the amount of such bonds which he offers to buy, but it is expressly provided in this section that no bonds must be sold for any price

less than the par value thereof.

The bids which were submitted to the board of county commissioners of Sweet Grass county are not upon the basis of par for this issue and you are advised that the deductions made in the various bids render them illegal and in my opinion no bid of this nature can be received by the board.

Section 2910 of the Revised Codes takes care of the printing of the bonds and provides that the board must cause the bonds to be printed or lithographed and pay therefor, out of any moneys in the treasury not otherwise appropriated. The expense of printing together with the expense of advertising the sale of bonds is not to be deducted from the amount received and the Codes provide for legal counsel necessary by placing at the disposal of the board of county commissioners the advice and counsel of the county attorney of the county and the attorney general of this state.

Section 2908 provides that the proceeds derived from the sale of bonds authorized to be issued by this article must be paid into the county treasury and must be applied to the redemption of the legal bonds, warrants and orders theretofore issued by the county. The same section also provides that these refunding bonds may be issued in exchange for other valid obligations of the county upon proper notice given.

You are advised upon the whole question that the bids received are in my opinion not at par and that the bonds cannot be sold for less than par.

Yours very truly,

ALBERT J. GALEN,

Attorney General.