

Constitutional Law, Indebtedness in Excess of Constitutional Limit.

An Act authorizing an indebtedness in excess of the constitutional limit for one purpose cannot, after approval by majority vote at a general election, be subsequently used by legislative authority for the raising of funds for a different purpose. Such a law would have to be again submitted to and approved by a majority of the electors at a general election.

Chapter 145, Laws of 1909, is unconstitutional.

Dec. 14, 1910.

State Board of Examiners,
Helena, Montana.

Gentlemen:

Pursuant to your direction I have carefully examined Chapter 145, Laws of 1909, with respect to its constitutionality, and I have reached the conclusion, unalterably, that this is not a constitutional law, and therefore, you were correct in heretofore disregarding the provisions thereof. It appears unconstitutional for the following reasons,—which seem exceedingly plain to me—to-wit:

It attempts to confer authority upon the state board of examiners to issue bonds to the extent of \$158,000.00 for the maintenance income fund of several educational institutions mentioned in the statute, under authority of Chapter 58, Laws of 1907, authorizing the board to issue bonds for the purpose of making certain educational permanent funds whole, and to redeem bonds theretofore issued and outstanding, for the benefit of such institutions.

The act of 1907, above referred to, was, of course, submitted to and approved by a majority of the votes cast at the general election in 1908, as required by the provisions of Sec. 2 of Art. XIII, of the state constitution. This section of the state constitution provides:

“The legislative assembly shall not in any manner create any debt except by law which shall be irrevocable until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purpose to which the funds so raised shall be applied and provide for the levy of a tax sufficient to pay the interest on, and extinguish the principal of such debt within the time limited by such law for

the payment thereof; but no debt or liability shall be created which shall singly, or in the aggregate with any existing debt or liability, exceed the sum of one hundred thousand dollars (\$100,000.00) except in cases of war, to repel invasion or suppress insurrection, unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election."

The law of 1907 could have been of no force or effect whatsoever until voted upon at a general election and ratified and approved by a majority of the votes cast thereat, and the question submitted to the people, pursuant to constitutional provision was an act relative to the permanent funds of various state educational institutions. And this act of 1909 relates solely and entirely to a different subject, namely: Maintenance income funds. Therefore the act of 1909 cannot constitutionally be considered an amendment of the act of 1907, and again the act of 1909 cannot stand alone, because it provides for the creation of a state indebtedness in excess of the constitutional limit of \$100,000.00.

Yours very truly,

ALBERT J. GALEN,

Attorney General.