

House Bill, No. 98, Constitutionality Of. Bonds and Warrants, Authority of Counties to Issue to Procure Seed Grain For Needy Farmers.

Under the provisions of Section 35, Article V, of the constitution of the state of Montana, no county in the state can be authorized to issue bonds or warrants for charitable purposes.

House Bill No. 98 is therefore unconstitutional.

January 18, 1911.

Mr. George W. Johnston,  
Chairman, Committee on Agriculture,  
House of Representatives,  
Helena, Montana.

Sir:

I beg to acknowledge receipt of your verbal request for the opinion of this department as to the constitutionality of House Bill No. 98, being "A bill for an act entitled an act authorizing counties to issue bonds and warrants to procure seed grain for needy farmers residing therein."

I have very carefully examined into the constitutionality of this proposed law and compared its provisions with the provisions of similar legislation attempted in other states, and though I am aware, from the examination of a similar law upon the statute books of the state of North Dakota and the decision of the supreme court construing said law, reported in the case of State of North Dakota v. Nelson County, 1 North Dakota Reports, p. 88, that the supreme court of that state held an identical law as not being repugnant to the constitution of that state, still I am of the opinion that the better reasoning is contained in the opinions of other courts upon similar legislation holding such statute as unconstitutional.

With reference to the North Dakota case, however, from a careful examination of the constitutional provision of this state, it will be seen that the phrase "except for necessary support of the poor" follows the general provision that "neither the state nor any county \* \* \* \* or any other political subdivision shall loan or give its credit or make donations to or in aid of any individual, association or corporation." The constitutional provision of our state with reference to this subject is contained in Sec. 1 of Art. XIII under the general title of "Public Indebtedness, as follows:

"Neither the state nor any county \* \* \* nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to or a shareholder in any company or corporation or a joint owner with any person or corporation except as to such ownership as may accrue to the state by operation or provision of law."

You will note by a comparison of this provision with that of the State of North Dakota, above quoted, that the phrase "except for necessary support of the poor" is omitted. However, the supreme court of the state of Minnesota in the case of William Deering & Company v. Paterson, reported in 75 Minn, 118, under a similar constitutional provision to that of our state holds that

"An act appropriating \$75,000.00 from the state treasury for the purpose of supplying seed grain to certain inhabitants of the counties of the state."

and containing the same provision as the proposed House Bill No. 98 for a lien upon the crops after the levy of a tax against the land, and declaring such a law unconstitutional, used this language:

"There is one ground on which, in our opinion, the statute is unconstitutional. It appropriates public money for a private purpose. It is well settled that public money may be appropriated for the support of paupers, but the statute in question does not limit the appropriation to those who are paupers. If the state cannot loan its credit it cannot borrow the money on its own bonds and then loan the money. It cannot do indirectly what it cannot do directly. No one can obtain public aid unless he is actually a pauper, however imminent or immediate the danger of his becoming such."

This view is followed by the supreme court of the state of Kansas under a similar enactment to the proposed law in question, in the case of State v. Isakes County, reported in 14 Kan. 418, in which that court held the law unconstitutional in being an appropriation of public moneys for private purposes.

The state of California in the case of Patty v. Colgan 97 Cal. 251, holds the law unconstitutional appropriating a certain sum for the relief of flood sufferers, holding such law to be contrary to the provisions of the constitution providing that the legislature shall have no power to make any gift of public money to any individual.

This is the same view as followed by the supreme court of the state of Colorado in the case of Oxnard Beet Sugar Company v. State, 105 N. W., 716, wherein the supreme court of that state held that an act to provide for the encouragement of the manufacture of sugar and creating a bounty" was unconstitutional as being an appropriation or pledge of public money for private purposes.

In addition to the provisions of Sec. 1, Art. XIII of the Constitution of Montana, I would respectfully call your attention to Sec. 35, Art. V, providing that:

"No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association."

In view of the foregoing you are therefore advised that in my opinion the terms of House Bill No. 98 contravenes the provisions of the state constitution.

Yours very truly,

ALBERT J. GALEN,

Attorney General.