

Bonds, Elections For. Elections, For Bond Issue. Election, Proclamation Of. Proclamation of Election, Sufficiency Of. Ballots at Bond Election, What Sufficient. Bond Elections, Ballots For. County Commissioners, Duties of With Reference to Bond Issue.

The notice of election required to be published by the board of county commissioners prior to an election to authorize the board to issue bonds must contain the amount to be raised, the object of the loan and the time of election. If upon these matters the proclamation is sufficient the other matters therein contained may be treated as surplussage.

Ballots must be in form provided by section 2938 of the Revised Codes, and if same contain the amount of issue, the rate of interest, time of payment, time of redemption and object for the issue, the same is sufficient.

Before advertising for bids for sale of bonds, county commissioners must fix and determine the amount of each coupon bond.

Interest on county bonds must be payable semi-annually on the first days of January and July of each year. County com-

missioners should date their issues so as to conform to these requirements.

February 18, 1911.

Hon. D. M. Durfee,
County Attorney,
Philipsburg, Montana.

Dear Sir:

I am in receipt of your communication of the 15th inst., requesting the opinion of this office upon certain propositions in your communication named, the first of which is as follows:

"Was the form of ballot used at the election held on the 8th day of November, 1910, sufficient in form and in accordance with the published proclamation of an election to be held on the 8th day of November, 1910, authorizing the county commissioners to sell coupon bonds for the erection of a court house in Granite county?"

It seems immaterial whether the form of the ballot as submitted by you and as used in the election held on November 8th, 1910, should compare exactly with the proposed form of ballot published in the proclamation of the election. Article V, Chapter II, of Title II, Part IV, of the Revised Codes deals with the question of raising money and the submission of such question to the electors of the county, Section 2933 providing in substance that when the board of commissioners desire to borrow money for any single proposition exceeding \$10,000 they should first secure the approval of the majority of the electors of the county. Section 2934 defines the first duty of the commissioners in that regard, that is,

"The board must first determine the amount necessary to be raised."

"Notice of the election clearly stating the amount to be raised and the object of the loan must be given."

Section 2937 provides:

"If a majority of the votes cast are in favor of the loan then the board may make the loan issuing bonds or otherwise as may seem best for the interest of the county."

It is apparent from the reading of these sections that all that was necessary for the commissioners to insert in the proclamation calling such special election, is the amount of the loan that the commissioners may be authorized to make and the purposes for which such loan is to be made. These facts are clearly ascertainable from the copy of the proclamation submitted by you, wherein the commissioners distinctly state that they desire to borrow \$50,000 for the purpose of providing a court house and the purchase of additional ground therefor. It is apparent then that the proclamation as issued by the board of commissioners calling the election contained some matters in addition to the statutory requirements. The question now presents itself as to whether such additional declarations in the proclamation would be binding upon the board of county commissioners, or whether the statements therein, which were made further than the requirements of the

statute should be disregarded as surplusage.

"The function and purpose of the notice (of election) is not to notify the public and tax payers what the law is but to notify them of the proposed action to be taken and of the time and place when and where the consent of these entitled by law to give or withhold it may be obtained."

State vs. Carbon county, 104 Pac. 22. (Utah.)

"In a notice of election for a particular purpose a substantial compliance with the statute is sufficient."

10 A. & E. Enc. 631.

"The object of a proclamation is to give notice to the electors that an election will be held and notice in any form which does not mislead the electors and cause them to lose their votes will be sufficient."

15 Cyc 323;

Tilson v. Ford, 53 Calif. 701;

Troutman v. Hayes, 101 S. W. 976 (Ky.)

I admit that the proclamation is somewhat irregular in stating more than is required by Section 2935 of the Revised Codes, but the ultimate purpose to borrow money and the issue of the bonds for the building of a court house and the acquisition of additional grounds is so clearly apparent from the proclamation that no one could have been deceived and if so, the unnecessary declarations of the commissioners in the proclamation should not and it is my opinion would not defeat so important a matter.

"Merely doing more than is necessary to accomplish a particular thing will not destroy the effect of that which it was necessary to do. This has been held to be a self evident proposition."

Hunt v. Fawcett, 36 Pac. 320. (Wash.)

Section 2935, Revised Codes, provides what notice of an election should be given to the public, simply requiring that the notice should state the amount to be raised and the object of the loan. It does not require that the rate of interest or that the term of the bonds should be stated or the period of redemption. The statute fixes these matters and it may be presumed that each voter understood that the time of payment, the rate of interest, and the interest paying periods, would be that fixed by the statute. This view is fully supported by a recent decision of the supreme court of Montana in the case of Carlson vs. City of Helena, 39 Mont. 111. In view then of the foregoing expressions as to the necessity or requirements of the election proclamation and referring to your first interrogatory, it is my opinion that the form of ballot used at the election held on the 8th of November, 1910, was sufficient at law. Section 2938 of the Revised Codes provides for the form of the ballot and its requirements in substance are that the ballot should be separate from the general ballot used in the election; that it should contain the words "for" stating the terms of the proposition and "against" stating the terms of the proposition. The form of ballot submitted distinctly states that the proposition is the "issuance of \$50,000 in bonds bearing interest at 4½ per cent redeemable in ten

years and payable in twenty years for the purpose of constructing a court house for said county and the purchase of additional ground therefor and the furnishing and equipment of the same." This unquestionably places the proposition to be voted upon clearly before the electors and upon a majority of such electors having expressed by ballots their sanction for such issue there can be no question as to the authority of the commissioners to proceed.

Your second interrogatory is as follows:

"If the notice calling for bids which was published on the 6th day of January, 1911, was invalid for the reason that the said notice was not published in a paper published in the city of New York, are the county commissioners authorized under law to re-advertise for bids?"

The county commissioners having been authorized as a result of the election of November 8th, 1910, to issue the bonds of the county in the amount of \$50,000 for the purpose of building a court house and acquiring additional ground, it then became the duty of the commissioners to determine and decide upon the details of the proposed bond issue, and they were then governed by the provisions of Article III, Chapter II, Title II, Part IV, Revised Codes of Montana. By resolution spread upon their minutes they would determine whether they are to issue bonds in making the loan, they should fix the period of such bonds which in accordance with the provisions of Section 2905 would not be for a longer period than 20 years, they would fix the time after which said bonds would be redeemable and also fix the rate of interest, which in accordance with said Section 2905 must not exceed 6 per cent per annum. Having adopted this resolution and determined upon the detailed terms of such proposed bond issue, it thereupon became the duty of said board in accordance with the provisions of Section 2906 of the Revised Codes to provide and prescribe the form of such bond and this having been accomplished it became their duty under the provisions of Section 2907 to advertise for the sale of such bonds. Said Section 2907 providing that one copy of such notice of sale must be published in one or more newspapers published in the city of New York, it being apparent from the information furnished that no advertisement was published in a paper published in the city of New York, it is therefore my opinion in answer to your second interrogatory that the notice calling for bids for said bonds was invalid because a copy of said notice had not been published in a newspaper published in the city of New York in accordance with the provisions of said Section 2907.

Your third question is as follows:

"Before advertising for bids should the county commissioners fix and determine the form and amount of each coupon bond offered for sale?"

The answer heretofore given to your second interrogatory answers this question and there can be no doubt but what before advertising for bids the commissioners should fix and determine the form and amount of each bond.

Your fourth interrogatory is as follows:

"Was the election held on the 8th day of November, 1910, under proclamation and under form of ballot used a valid election and sufficient to authorize the county commissioners of Granite county to sell bonds for the erection of a court house in the sum of \$50,000?"

In view of the expressions above made, it is my opinion that the election of November 8th, 1910, under proclamation and under the form of ballot used was a valid election and sufficient to authorize the county commissioners to proceed in accordance with the provisions of Art. III, Chapter II, Title II, Part IV, of the Revised Codes of 1907.

Your fifth interrogatory is as follows:

"In fixing the form of bond should the county commissioners provide that the bond shall bear date on the first day of March as provided in the proclamation and fix the date of the payment of interest as of the first day of March, and the first day of September, or should the interest coupons provide for the payment of the interest on the first day of July and the first day of January as provided in the statute?"

Even though the proclamation calling for the election stated that the bonds would be dated March 1st, 1911, in view of the expressions contained in my answer to your first question, it is my opinion that the commissioners are not bound by the date mentioned in the proclamation. All are bound to know the law and it is controlling notwithstanding the terms of the proclamation. Section 2905 of the Revised Codes provides that the interest on these bonds must be payable semi-annually on the first day of January and July of each year, and I would suggest that the commissioners in adopting their resolution should date such bonds on January 1st, 1911, or July 1st, 1911, and upon sale thereof the accrued interest, if any, would be accounted for by the parties bidding for the purchase of said bonds.

I herewith return papers in the case of Morse vs. County of Granite, et al.

Yours very truly,

ALBERT J. GALEN,

Attorney General.