

Refunding Bonds, Duty of County Commissioners. Funds, Transfer of. Primary Election, Petition. Nominating Petition, Filing. Fee, for Filing Peitition. Real Property, Assessment of. Tax Liens, Description of Property. Assessment, Description of Real Property.

Refunding bonds may be issued by the county commissioners only for certain purposes. No fees are required for filing primary county petitions of candidates. Where a description in the assessment roll is so defective as to render it impossible to identify the property sought to be taxed, and no lien for taxes is created, valid tax deed may not issue.

May 27, 1914.

Hon. Gerald Young,
County Attorney,
Thompson Falls, Montana.

Dear Sir:

I am in receipt of your recent letter requesting an opinion upon the following propositions:

"1. When the board of county commissioners authorize a transfer of \$5,362.48 from the poor fund to the road fund and a transfer of \$3,746.36 from the general fund to the road fund and thereby redeem \$9,108.84 in outstanding road warrants, and when the board of county commissioners next order an issue of refunding bonds in the sum of \$38,000 to redeem outstanding road warrants and orders, under Section 2905 Montana Revised Codes, are the transfers aforesaid subject to the issuance of refunding bonds when it is necessary for the board to replace these transfers in the respective funds mentioned by money secured in the issuance of \$38,000 refunding bonds?"

"2. Shall the county clerk charge a fee under Section 3158 as amended 1911, 251, for the filing of petitions for the candidates under the new Primary law, Laws 1913?"

"3. When a description on the assessment roll is so vague as to render it impossible to identify the property and the delinquent taxes are subject to a tax deed, and when the county clerk files his notice for such a tax deed, would a supplement by him of the indefinite description by the proper reference to the Deed book and folio in such notice be authorized or sufficient?"

1. Under Section 2905, Revised Codes of 1907, power is conferred upon the board of county commissioners to issue refunding coupon bonds to enable the board to redeem all legal outstanding bonds, warrants or orders, for four purposes only, viz:

1. For the purpose of necessary building sites;
2. For the construction of necessary public buildings;
3. For the construction of public highways; and
4. For the construction of public bridges.

It will be observed that no power is given to issue refunding bonds to replenish the poor fund or the road fund, and it necessarily follows that if these funds be depleted or encroached upon by transfer of to another fund, the same may not thereafter be replenished in any such manner as suggested by your statement. It is questionable whether, under the facts which you state to the board is clothed with any power at all to transfer moneys from a special fund, such as the poor fund to the road fund (11 Cyc., 510), for this may only be done when there is a surplus on hand (Sec. 2921 R. C. '07). If, however, the transfers, as indicated in your letter, have been made, and outstanding road warrants have thereby been redeemed, it is my opinion that the commissioners are authorized to issue refunding bonds only to the extent of enabling the board to redeem the remaining valid road warrants outstanding, and not in any event to raise a fund for replenishing either the poor or the general fund.

2. The primary election law does not contemplate that fees shall be charged for the filing of nominating petitions of candidates for nomination, and makes it the duty of the secretary of state, or county clerk, as the case may be, to receive and file such papers, hence, I am of the opinion that no fee may be exacted for such service.

3. Where a description of real property on the assessment roll is so vague as to render impossible the identification of the property sought to be taxed, I am of the opinion that no steps may be taken which will afford an adequate or effective remedy for the collection of delinquent taxes thereon, for under the uniform decisions of the courts, property sold by tax deed must be described with enough accuracy to convey to the purchaser the precise land which he has bought, and no other, and must be sufficiently clear and certain for all purposes of identification, both in support of the tax title, and in order that it may not injuriously mislead parties interested in the land, and if it fails in this, it is void and passes no title;

37 Cyc., 1445.

Nor does such a defective description establish a lien for taxes sufficient to sustain proceedings for the forfeiture or sale of the land for non-payment of the tax.

37 Cyc. 1052.

Yours very truly,

D. M. KELLY,
Attorney General.