

Initiatory Measure No. 8, Constitutionality of. Farm Loan Bill, Initiated, Whether Operative.

Initiatory Measure No. 8, commonly known as the Farm Loan Bill, is not operative by reason of conflicting with provisions of the state constitution.

December 18, 1914.

Hon. S. V. Stewart, Governor,
Helena, Montana.

Dear Sir:

I beg to acknowledge receipt of your communication of the 9th instant, submitting the question:

As to the legality of Initiatory Measure No. 8, commonly known as the "Farm Loan Bill," and as to the duties of the State Board of Land Commissioners thereunder, in case the said law is found to be operative under the provisions of the state constitution?"

The law in question was proposed by initiatory petition, providing in its title for the

"Safe investment of the state permanent common school funds, and all other state educational, charitable and penal institution funds in the securities herein designated, etc."

Section 3, Article II, State Constitution, provides:

"Such public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested so far as possible in public securities within the state, including state district bonds issued for the erection of school buildings, under the restrictions to be provided by law."

The State Constitution does not give any direction relative to the investment of these funds except in the Section above quoted. It is there provided that investments so far as possible, shall be in public securities within the state. Section I of this Act enumerates the securities in which such funds may be invested as school district bonds, when they are the only bonds issued by the district, in bonds of the State of Montana, or of the United States, in interest bearing warrants upon the general funds of the State, or in any state capital building bonds of the State of Montana, now issued or which may be hereafter issued, in bonds of irrigation districts within the State of Montana, and in first mortgages on good improved farm land in the state, in the manner provided in the Bill.

The enumeration of the above securities is in effect a prohibition against the investment in any securities not therein named, and this is the evident meaning of the Bill, for in the title it is provided that the funds shall be invested

"in securities herein designated."

The list of securities named in which such funds may be invested wholly exclude bonds and warrants of counties or of towns or cities, and also a second issue of bonds by school districts. The excluded class of securities are public securities within the state, within the meaning of the provision of the Constitution above quoted, and their exclusion

can only be justified on the ground that the excluded securities are an unsafe investment; for if any legislative body, whether it is the general electorate or the legislature, has the authority arbitrarily to prevent the investment in any class of "public securities," then such power might prevent the investment in any class or all classes of public securities, thereby setting at naught this provision of the State Constitution above quoted, which is declared by the instrument itself to be both mandatory and prohibitory. *Section 29, Article III.* But if the provisions of Section I of the Act are too restricted, and a court should hold that county and city securities should be contained therein, this fact would not necessarily vitiate the entire Act, but would only be in effect urging this provision of the Constitution into the law.

It is provided in Section 2 of the Act that it shall be the duty of the State Board of Land Commissioners to fill the applications for loans on farm lands received from the different counties as rapidly as such funds are available, and in the order in which they are received, and that if enough funds remain on hand to warrant them in so doing, the Board shall divide such moneys among the organized counties of the state in proportion to the population.

Section 12, Article XI of the State Constitution, provides that:

"The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the State against loss or diversion."

No where in this law is there any regulation prescribed for the investment by the State Land Board of these funds, except the naked statement that it is the duty of such Board to fill the applications for loans on farms; nor is there any power or authority conferred upon the said Board, or anyone else to prescribe any rules or regulations relating thereto. No authority is in the act conferred upon the Board to receive or accept mortgages as security, or to receive or accept any security whatsoever, as to loans made by the Board itself. The Bill contains specific provisions /as to the method of procedure to be followed, and the security to be taken when the loan is made by a county, but not any of such regulations relate to any procedure had by the Board in filling the applications for such loans. This section of the law is therefore, inoperative. It is provided in the law that the State Board of Land Commissioners shall divide the funds which is on hand among the various counties according to population in the manner prescribed in the Act; that the county shall advertise the fact that it has this money, and in case applications are made for loans, the County Commissioners shall constitute a Board of Appraisalment, and shall appraise the land offered as security; and that after the money received from the State Board, has been retained by the county for a time not named in the Act, it is the duty of the county to return the same, except that which has been loaned, to the State Land Board, and to pay to the State six per cent interest on such moneys for the period of sixty days. All expenses of advertising, appraising the land, paying the interest, and all other expenses connected with the transaction, except the expense of the abstract and recording of the mortgage, shall be borne by the county, and paid out of the general fund. If, then, under this

Act a county received one hundred thousand dollars, which it did not loan, it would be the duty of the county to return this money to the State Land Board, together with the interest thereon, amounting to one thousand dollars. This one thousand dollars with the expense of advertising and all expenses connected with the appraisal of the land, must be paid from the general fund of the county, and of course, raised by general taxation. All the property in the county would then be subject to the payment of this tax, the only purpose of which would be to defray the expenses of holding for a time in the county a fund for the benefit of the private borrower. Section 11, Article XII of the State Constitution, provides:

"Taxes shall be levied and collected by general laws and for public purposes only."

and Section I of Article XIII, prohibits the making by any county of any donation, grant or subsidy to any individual, association or corporation.

The provisions of Section I, Article XII of the State Constitution, make it the duty of the legislature to provide the necessary revenue for the support and maintenance of the State, and in obedience to this mandate of the Constitution the legislature has provided a uniform system of assessment and taxation, and in Section 2502, it is provided that:

"All taxable property must be assessed at its full cash value."

The official returns of the assessment in the various counties for the year 1914 disclose the fact that in only two counties of the state is the average assessment of land greater than \$8 per acre, while in twenty-one counties, it is less than \$4 per acre, and the official returns disclose the further fact that a very small per cent, perhaps not more than six per cent of the land within any county is assessed as high as \$10 per acre. Only the most highly improved or cultivated, or most advantageously located farms reach an assessment of \$10 per acre. It would then follow under this provision of this law, that more than 90 per cent of the farming community, and all other interests in the county would be assessed and taxed, and the sole object of such assessment and taxation would be to hold within the county a fund of said moneys from which private loans might be made. It is true that the Act in question deals with "appraised value," rather than "assessed value," and the county commissioners who constitute the county board of equalization are constituted the board to do the appraising. In as much as the state law requires lands to be assessed "at their full value," or "full cash value," and this appraisal so made must be endorsed or ratified, either directly or indirectly by this same Board (for it is idle to say that it is not the duty of the Board to see that the terms of law are complied with), it would then follow that this same Board must either appraise this land at the same value that is fixed upon it for taxation purposes, or else we would have the anomaly of the "full value" of land for taxation purposes being one thing, and "full value" of the land as security an entirely different thing. If land is assessed at its full value for taxation purposes, it is hardly reason-

able that a Board of Appraisers would appraise it at more than its full value for security purposes. I am of the opinion that this provision of the law contravenes the provision of Section 11, Article XII, and Section I, Article XIII of the state constitution, and that it is class legislation. In Section 9 of the Act, it is provided that it is the duty of the counties taking the loans to foreclose the mortgage in case of default, and that in case of sale of the premises, the county must bid in the same, if there are no other bidders, and that the county "shall at once pay to the State Board of Land Commissioners such full amount due and interest out of the general fund of the county." Here again the general fund of the county is drawn upon, which fund can only be created by taxation, of all the property within the county, and the county is not only made surety for the borrower, but is in fact as to the state, the principal debtor, for the state has no dealings with the borrower, but only with the county. The county is then becoming not only surety, but a debtor for the benefit of a private borrower. Section I of Article XIII of the State Constitution provides:

"Neither the state nor any county, city, town, municipality 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, etc."

Neither does this bill take any account of the provisions of Section 5, Article XIII of the State Constitution which prohibits a county from becoming indebted in any manner, or for any purpose to an amount including existing indebtedness, in the aggregate exceeding five per centum of the taxable property therein.

From these considerations, I am forced to the conclusion that either the provisions of this bill or the provisions of our state constitution must give way, for being in direct conflict, they cannot both stand, and for that reason, the bill in its entirety is inoperative and void.

Yours very truly,

D. M. KELLY,

Attorney General.