

Schools—County Unit System—Bonds of District.

The question of whether the bonds of a school district of a county which has adopted the County Unit System and voted prior to the creation of the rural district are undoubted validity is one for judicial determination.

July 15, 1919.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

Dear Miss Trumper:

You have submitted to me the question of whether a school district in Cascade County (which county has recently adopted the Unit System and therefore includes all school districts therein) may proceed to sell bonds which were voted upon prior to the creation of the rural school district, and whether the State Land Board will be willing to purchase said bonds.

Paragraph 1 of Section 5 of Chapter 211, an Act for the creation of rural school districts, etc., provides: "The Board of Trustees of every rural school district shall have only the powers and shall perform only the duties enumerated in this Act." The Board of Trustees of each sub-district of the rural school district shall have all the powers and perform all the duties imposed upon the trustees of school districts according to the provisions of Chapter 76 of the Session Laws of 1913, and acts amendatory thereof, except as modified by the terms of this Act."

Paragraph 5 of Section 5 provides: "The Board of Trustees of any rural school district is hereby vested with the power and authority to issue and negotiate on the credit of a rural school district coupon bonds for any one or more of the purposes authorized in Section 2015 of Chapter 76 of the Session Laws of the 13th Legislative Assembly, and acts amendatory thereof and supplemental thereto."

It is therefore apparent from the foregoing that the legislature intended to and did repose in the rural district school board authority to bond the district for the purposes set forth in said Section 2015 and modified the powers of sub-district boards to that extent.

All preliminary acts of a school board in submitting to the electors bond issues lead up to the final act, the sale of the bonds, that is, the exchange of the promise to pay for the money loaned. The debt of the district, however, is not created by any of these preliminary steps. It is only created when the bonds are delivered to the purchaser and he has paid therefor. This has not been done in the case you refer to, and, since the powers of the local board are now superceded by those of the rural district board, any bonded debt hereafter created becomes that of the whole district.

I am, therefore, of the opinion that this would involve the issue of the local board in such doubt as to their authority to sell bonds at this time as would preclude any purchaser from bidding thereon. This matter can be definitely determined only by a court decision and until the matter is so determined, I will be unable to approve the purchase of these bonds by the State Land Board.

Respectfully,

S. C. FORD,

Attorney General.