

**Bonded Indebtedness, How To Determine—County,
Bonded Indebtedness Of, How Determined.**

Method prescribed for determining bonded indebtedness of county when taking proceedings to bond county for road purposes.

April 27, 1920.

Mr. Fred W. Schmitz,
County Attorney,
Townsend, Montana.

Dear Sir:

I am in receipt of your letter in re transcript of proceedings in bonding your county in the sum of \$100,000.00 for road purposes. You have submitted with your letter the transcript of proceedings also a letter from Drake-Balard Co. of Minneapolis, Minn.

It appears from the letter of Drake-Ballard Co. that they had submitted their bid for these bonds subject to the usual provision in such cases that the bonds be approved by an attorney of their selection. While the opinion of their attorney rejecting the bonds has not been submitted to this office it appears from the letter that it was adverse to the bonds for the following reasons as stated in the letter. "It appears that in the case of Hilger vs. Moore 182 Pac. 477, the supreme court of Montana decided that the legislature has the right to divide the property of a State into seven classes, the values of which are extended for taxation all the way from 100% to 7% of the actual value. Then the case of State ex rel. Calles vs. Board of Commissioners of Hill County et al, which was reported in volume 185 Advance Sheet of the Pac. Reporter, the supreme court decided that bonding capacity of counties was to be measured by the actual value and not by the assessed valuation of taxables. And from the analysis made of your statement furnished us, it appears that the assessed valuation for the

purpose of paying debts is between $\frac{1}{3}$ and $\frac{1}{4}$ of the actual value which forms a basis of contract debts. In other words, instead of being limited to an indebtedness of 5% of your taxables, according to a recent decision your county can incur indebtedness up to from 15 to 20% of their taxables, and it is at the option of the legislature even from time to time to enlarge this percentage." And further, "These decisions in the opinion of our attorney render Montana county securities dangerous inasmuch as the county may incur indebtedness beyond its ability to meet the same. For this reason and for other reasons which it will not be necessary to go into details, our attorneys have rejected your bonds."

It is therefore apparent from this letter that the real reason these bonds were rejected was not a legal reason at all but was purely financial. The basis on which to compute the limit of indebtedness is the full cash value and assessed value which means the same thing. The full cash value or assessed value of Broadwater County as shown by assessment of state and county for 1919 was \$15,468,900 and 5% of this amount is \$773,445, while the total bonded indebtedness including the present issue of \$100,000.00 is \$262,000.00. This is without deducting the sinking fund of \$17,850.00 leaving them more than \$500,000 within the limit of their indebtedness as decided by our supreme court in the case of state ex rel Calles vs. Board of County Commissioners, etc. 185 Pac.

The full cash value has always been the basis on which to compute the limit of indebtedness in this state. This was the provision of the statute at the time of the adoption of the constitution (Sec. 1673 5th Div. Compiled Statutes 1887) and has been the law of this state ever since. (Sec. 2502 Revised Code) "In view of this declaration of the public policy of this state, the language of the constitution above must be construed to mean that the limit of county indebtedness is 5% of the value of the taxable property as that value is disclosed by the assessment roll; and since the only value which appears on the assessment roll is the value fixed by the county assessor as equalized by the county and state board of equalization, that is, the cash value-Taxable property and "Assessed value" means the same thing, Calles vs. Board of County Commissioners.

In Hilgar vs. Moore 56 Montana——182 Pac. 477 our supreme court held that "Chapter 51 Laws of 1919 had nothing whatever to do with the assessment of the property and the determination of the assessed valuation. It deals only with the imposition of taxes after the assessment roll is completed and in the hands of the county clerk. The extension of the tax by him is merely a mathematical calculation, a mere ministerial duty."

While our supreme court in the Calles case would not pass on the question whether a sinking fund should be deducted from gross indebtedness in order to determine the "indebtedness." Within the meaning of our constitution it would seem that this should be the rule (Abbott Public Securities, Sec. 79 Kelly vs. City of Minneapolis, 63, Minn. 125.)

Applying this rule and deducting the \$17,850 in the sinking fund would leave indebtedness of \$244,150 including the present issue of the total bonded indebtedness of this county. This amount would be within the limit as fixed or classified for taxation purposes. Therefore, the opinion disapproving this issue in so far as it is a legal opinion, is absolutely without merit.

The ability of the county to meet its obligations within the limit of its indebtedness as fixed by law is not a question of law at all, but one based on purely financial or industrial condition and no opinion based on such condition could justify a refusal to take the bonds.

The bonded indebtedness of this county is more than \$500,000.00 within its limit as defined and determined by our supreme court, and it is even within the limit of 5% of the percentage valuations of its property upon which taxes are assessed as shown by the statement of the County Treasurer attached to the transcript.

Respectfully,

S. C. FORD,

Attorney General.