Bonds—Counties—County Commissioners—Indebtedness —Warrants.

Authority of the county to issue amortization or serial bonds sufficient to take up the outstanding warrants in the Bridge fund, issued prior to the 1st day of May, 1923, and warrants in other funds not entitled to be paid from the proceeds from the sale of such bonds; discussed and applied.

Chapter 21 is in conflict with Section 4717, Revised Codes of Montana, 1921, insofar as it precluded the issuance of bonds for any of the purposes enumerated in Section 4614, as amended, without a vote of the electors of the county, without regard to whether the amount of the issue is less than $10,000.00.

Money in the interest and sinking fund cannot be used to take up outstanding warrants in the Bridge fund under the provisions of Chapter 86, Laws of 1923.

E. A. Blenkner, Esq.,
County Attorney,
Broadus, Montana.

My dear Mr. Blenkner:

You have submitted to this office the following questions for an opinion:

First: "If the County Commissioners have the approval of the State Examiner for the issue of amortization bonds, to bear interest at six per cent per annum to an amount sufficient to pay off all warrants on the bridge fund that were outstanding on the first day of May, 1923, the date when Chapter 21 of the 1923 Laws became effective, one of the companies which is bidding on the repair of the bridge will take warrants for its compensation."

Second: "In case these bonds are issued, can the proceeds be used for any other purpose than retiring the outstanding warrants drawn on the bridge fund? Or in other words, will the proceeds of the sale of the bonds have to be distributed pro rata to take up all outstanding warrants on all funds?"

Third: "Does this Act (Chapter 21) in any way interfere with Section 4717 of the Revised Codes of Montana, 1921, or have the County Commissioners still the authority to issue bonds not exceeding the amount of ten thousand dollars for any single purpose without calling an election?"

Fourth: "Under the terms of Chapter 86 of the Laws of 1923 have the County Commissioners authority to invest the money in the bond and interest sinking funds in county warrants issued by their own county? In other words, could the Board of County Commissioners use the $16,000.00 in those two funds to retire outstanding warrants on the bridge fund of this county? Do the words 'bonds or securities supported by general taxation' include outstanding warrants?"

"The idea is to provide some means of finance whereby the repairing of the bridge may be paid for at its completion, and if you have any means of so doing to suggest, it will be greatly appreciated."

Your first question as to whether with the approval of the State Examiner the county will be authorized to issue amortization bonds or serial bonds to take up outstanding warrants issued prior to May 1, 1923, the date when Chapter 21, Laws of 1923, became effective, is answered, I believe, by the latter part of Section 4614, as amended by Chapter 21, which provides:

> "Provided, however, that nothing contained in this Act shall be so construed as to make it unlawful to issue amortization or serial bonds without a vote of the people for the purpose of retiring bonds or warrants outstanding when this Act becomes effective, so long as such bonds or warrants, when

> added to all other outstanding indebtedness, does not exceed five per centum of the assessed valuation of the county issuing the same."

Answering your second question, "In case bonds are issued can the proceeds be used for any other purpose than retiring the outstanding warrants drawn on the bridge fund?": Warrants when drawn against the various county funds are required, when there are no available funds on hand against which they are drawn, to be registered and paid in the order of their registration.

The County Budget Act, Section 225, Revised Codes of 1921, requires county institutions and agencies to prepare a budget or estimate of expenditures for the succeeding year, which includes general, contingent, road, bridge and poor funds, while Section 228 limits county expenditures for the fiscal year for which the budget was made to the estimated amount as approved in such budget, except in cases of emergency or just cause. Where the County Commissioners determine that an emergency or just cause exists they may permit expenditures to be made to cover the emergency and include the same in their estimate for tax levy in the succeeding fiscal year.

No doubt the destruction of a bridge such as occurred in this case would constitute an emergency justifying additional expenditures from the bridge fund. These sections would seem to indicate that all obligations should be kept on a cash basis, except as to emergencies. However, this would not mean that a warrant registered against the general fund would have to be paid after one previously registered against the bridge fund or vice versa. I can, therefore, see no objection to funding all of the warrants registered against a particular fund such as the bridge fund, even though warrants held by others and registered against other funds were not taken up by the bond issue.

There is no reason why, under the provisions of Section 4614, as amended by Chapter 21, Laws of 1923, the county should not be able to issue amortization or serial bonds for the purpose of funding outstanding warrants issued against the bridge fund prior to May 1, 1923, the date this act became effective.

As to whether this Act (Chapter 21) is in conflict with Section 4717, Revised Codes of 1921, and whether the County Commissioners still have authority to issue bonds not exceeding the amount of $10,000 for a single purpose, without a vote of the people of the county, Section 1 of Chapter 21 referred to, provides in part as follows:

> "The Board of County Commissioners of any county is hereby vested with the power and authority to issue and negotiate, on the credit of the county, coupon bonds to an amount sufficient to enable the county to fund all legal outstanding warrants, orders or bonds; or for the purchase of necessary public building sites, and for the construction of necessary public buildings, public highways and bridges; * * * provided,

however, that no such bonds, except bonds to refund outstanding bonds heretofore issued, shall be issued, negotiated or sold for any purpose whatever, or exchanged for outstanding warrants, orders or bonds, * * * without the approval of a majority of the electors of such county voting at an election at which the question of issuing and selling or exchanging such bonds shall be submitted to the electors of such county," * * *

While Section 4717, Revised Codes of 1921, provides:

> "The Board of County Commissioners must not borrow money for any of the purposes mentioned in this title, or for any single purpose to an amount exceeding ten thousand dollars, without the approval of a majority of the electors of the county, and without first having submitted the question of a loan to a vote of such electors; provided, that it shall not be necessary to submit to the electors the question of borrowing money to refund outstanding bonds, or for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary lines."

It is apparent from a reading of these two provisions that Chapter 21 is clearly in conflict with Section 4717, insofar as issuing bonds or incurring indebtedness up to $10,000, without a vote of the electors, is concerned, and Chapter 21, being the later Act, controls.

You have also asked as to whether, under Chapter 86, Laws of 1923, the County Commissioners have authority to invest the money in the bond and interest sinking fund in county warrants issued by their own county, and second, whether the words "bonds or securities supported by general taxation" include outstanding warrants.

Chapter 86 authorizes the Board of County Commissioners to "invest so much of the bond sinking fund * * * as is not needed for the payment of interest coupons, in United States government bonds or securities, state bonds or securities, county or city bonds, or other bonds or securities which are supported by general taxation, except irrigation bonds."

The instruments referred to in Chapter 86 are government bonds or securities, state bonds or securities, county or city bonds, or other bonds or securities which are supported by general taxation. This does not, in my opinion, include warrants, because they are not negotiable instruments and are not expressly included among the list of securities mentioned. They are merely orders to pay issued by a municipal or public corporation until such time as there may be money in the fund against which they are issued. While warrants are paid out of tax levies, no special levy is made for their payment as in the case of a bond sinking fund for the payment of interest and principal of a bond issue.

It is, therefore, my opinion that your county has authority to issue amortization or serial bonds sufficient to take up the outstanding warrants in the bridge fund, issued prior to the 1st day of May, 1923, and that warrants in other funds are not entitled to be paid from the proceeds from the sale of such bonds; that Chapter 21 is in conflict with Section 4717, Revised Codes of 1921 insofar as it precludes the issuance of bonds for any of the purposes enumerated in Section 4614, as amended, without a vote of the electors of the county without regard to whether the amount of the issue is less than $10,000; and, lastly, that the money in your interest and sinking fund cannot be used to take up outstanding warrants in the bridge fund under the provisions of Chapter 86, Laws of 1923. This fund being a trust fund and raised for a specific purpose, it could not be used to purchase warrants of the county to which the trust fund belongs, because warrants of this character are not included in the securities mentioned in Chapter 86, Laws of 1923, and are not "bonds or securities supported by general taxation."

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.