

Bonds—Counties—Indebtedness.

A county may issue bonds for the purpose of retiring bonds maturing if the amount of such new bonds, when added to all other existing indebtedness of the county, does not exceed five per centum of the assessed value of the taxable property of the county as disclosed by the assessment for state and county purposes immediately preceding the issuance of such bonds.

R. M. Hattersley, Esq.,
County Attorney,
Conrad, Montana.

My dear Mr. Hattersley:

You have requested my opinion as to the manner of determining the limitation of indebtedness which a county may incur in connection with the issuing of bonds.

You state in your letter that the assessed value of the taxable property in your county is about \$16,000,000, while the total of the percentages upon which taxes are computed is about \$5,000,000; that your bonded indebtedness is \$534,000, of which amount \$145,000 matures next year. If the limitation is 5% of the \$16,000,000 assessed valuation your total indebtedness is under the limit, but if the limitation is 5% of the \$5,000,000, the total percentages on which taxes are computed, then you have already exceeded the limit.

Section 4614, Revised Codes, 1921, which authorizes the issuance of bonds by counties, was amended by Chapter 21, Laws of 1923. As so amended this section provides that bonds issued under its provisions shall not, together with all other bonded indebtedness of the county, exceed five per cent of the total of the percentages of the assessed value on which taxes were computed, to be ascertained by the last assessment for state and county taxes previous to the issuing of such bonds, and that such bonds, (except when the same are to be issued for the purpose of refunding bonds issued prior to the approval of said Chapter 21) shall not be issued unless approved at an election, etc., but such section, as so amended, contains the following provision:

“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.”

The provisions of this section should be construed as follows: If the bonds to be issued are for the purpose of retiring warrants or bonds which were issued prior to and were outstanding on February 20th, 1923, when Chapter 21 of the Laws of 1923 was approved, then the limitation of indebtedness is determined by taking five per centum of the total assessed value of all taxable property, to be ascertained by the last assessment for state and county taxes previous to the issuing of such bonds, and the total indebtedness of the county for all purposes, including such bonds, must not exceed such limit; if the bonds are to be issued for any other purpose, then the limitation of the **bonded indebtedness only** is determined by taking five per centum of the total of the percentages upon which taxes were computed. For example, in determining the limitation with reference to the \$145,000 of bonds maturing next year and which are to be refunded by issuing new bonds, such new bonds, together with all other bond and warrant indebtedness of your county, at the time such new bonds are issued, must not exceed five per cent of the assessed value of \$16,000,000, or a total of \$800,000, but if such bonds were not to be issued for the purpose of retiring bonds or warrants issued prior to and outstanding on February 20, 1923, but were to be issued for some other purpose, then the total amount of bonds which the county could issue would be determined by taking five per cent of the total percentages on which taxes were computed, or 5% of \$5,000,000, which would be \$250,000.

It is, therefore, my opinion that your county may issue bonds for the purpose of retiring the \$145,000 bonds maturing next year, if the amount of such new bonds, when added to all other existing indebtedness of the county, does not exceed five per centum of the assessed value of the taxable property of the county as disclosed by the assessment for state and county purposes immediately preceding the issuance of such bonds.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.