

**Assessment—Budget—Counties—County Commissioners
—Indebtedness—Roads—State Highway Commission—War-
rants.**

Where the issuance of the proposed warrants will not cause the total indebtedness of the county to exceed five per cent of the assessed valuation as shown by the last assessment roll, and the proposed expenditure is within the budget for road purposes, the county can issue warrants not to exceed \$10,000 for the purpose of building the proposed road.

Such warrants should be issued to the State Highway Commission.

C. H. Roberts, Esq.,
County Attorney,
Glasgow, Montana.

My dear Mr. Roberts:

You have submitted to this office the question as to the right of the County Commissioners of Valley county to issue warrants upon the road fund to the amount of \$10,000 to cover Valley county's share of the cost of the Nashua-Frazer Federal Aid Project No. 189, and have requested my opinion thereon.

It appears from your letter that the indebtedness of the county exceeds the limit defined by Chapter 21, Laws of 1923; and that it is unable to proceed to issue bonds, and that there are not sufficient funds in the road fund from which to appropriate the amount of \$10,000 which the State Highway Commission has recommended to the Board to appropriate for such purpose. Mr. Lewis of the First National Bank has stated to the Board of County Commissioners that, in order to see the project effected and the Federal Aid secured in building said road, his bank will advance the money upon such warrants being issued and registered and will carry said warrants until they can be taken up by the county.

All moneys expended on Federal Aid projects must be expended through the State Highway Commission. It is, therefore, necessary that Valley county deposit with the State Highway Commission the amount of funds which represents its share of the proposed project. These funds are drawn upon by the State Highway Commission.

Abbott on Public Securities at page 934 states the following:

“The weight of authority is to the effect that the power to issue an evidence of indebtedness, negotiable in its character, cannot be implied but must be expressly given in some charter, statutory or constitutional provision. Under this ruling the making of a promissory note by the officials of a public corporation has been held unauthorized even where the indebtedness is one that the public corporation could legally incur.”

(Citing *City of Nashville v. Ray*, 86 U. S. 468; *Merrill v. Town of Monticello*, 138 U. S. 673.)

In the case of *Police Jury v. Britton*, 15 Wall. 566, the Court said:

“We have, therefore, the question directly presented in this case whether the trustees or representative officers of a parish, county, or other local jurisdiction, invested with the usual powers of administration in specific matters, and the power of levying taxes to defray the necessary expenditures of the jurisdiction, have an implied authority to issue negotiable securities, payable in future, of such a character as to be unimpeachable in the hands of bona fide holders, for the purpose of raising money or funding a previous indebtedness. * * * That a municipal corporation which is expressly authorized to make expenditures for certain purposes may, unless prohibited by law, make contracts for the accomplishment of the authorized purposes, and thereby incur indebtedness, and issue proper vouchers therefor, is not disputed. This is a necessary incident to the express power granted. But such contracts, as long as they remain executory, are always liable to any equitable considerations that may exist or arise between the parties, and to any modification, abatement or rescission, in whole or in part, that may be just and proper in consequence of illegalities, or disregard or betrayal of the public interests. Such contracts are very different from those which are in controversy in this case. The bonds and coupons on which recovery is now sought are commercial instruments, payable at a future day and transferable from hand to hand. Such instruments transferred before maturity to a bona fide purchaser leave behind them all equities and inquiries into consideration and the conduct of parties; and become, in the hands of an innocent holder, clean obligations to pay, without any power on the part of

the municipality to demand any inquiry as to the justice or legality of the original claim, or to plead any corrupt practice of the parties in obtaining the security. * * * The power to issue such obligations, and thus irretrievably to entail upon counties, parishes and townships a burden for which perhaps they have received no just consideration, opens the door to immense frauds on the part of petty officials and scheming speculators. It seems to us to be a power quite distant from that of incurring indebtedness for improvements actually authorized and undertaken, the justness and validity of which may always be inquired into. It is a power which ought not to be implied from the mere authority to make such improvements. It is one thing for county or parish trustees to have the power to incur obligations for work actually done in behalf of the county or parish, and to give proper vouchers therefor, and a total different thing to have the power of issuing unimpeachable paper obligations which may be multiplied to an indefinite extent."

This opinion is quoted with approval in Abbott Public Securities, page 169, and the author commenting thereon states the following:

"As stated in this opinion, there is a marked legal distinction between the power to become obligated to a lender for the amount of money borrowed, or to a creditor for the amount due, and the power to issue for sale in the open market, a negotiable bond as a commercial security with immunity in the hands of bona fide holders for value from equitable defenses. The courts adhere so strictly to the rule that the power to issue negotiable bonds must be expressly given, that every person dealing with a corporation, it has been held many times, must at his peril take notice of the authority of the corporation and its power and the terms of laws by which the power is supposed to be granted, even though that person be a bona fide holder for value of such securities."

It was said in *Butts County v. Jackson Bank* (Ga.), 60 S. E. 149:

"County Commissioners have no authority to borrow money to be used in defraying current expenses though the loan be payable within the current year and the general design be to discharge the same from the anticipated revenues of that year."

In *Costello v. Inhabitants of North Easton* (Mass.), 91 N. E. 219, it was held that:

"A watch district established under Revised Laws, Chap. 31, Sec. 8, has no power to borrow money even in anticipation of taxes though it may raise and appropriate money for purposes for which it was organized."

In *Mayor of Nashville v. Ray*, 19 Wall. 468, the Court said:

"Vouchers for money due, certificates of indebtedness for services rendered or for property furnished for the uses of the city, orders or drafts drawn by one city officer upon another, or any other device of the kind, used for liquidating the amounts legitimately due to public creditors, are of course necessary instruments for carrying on the machinery of municipal administration, and for anticipating the collection of taxes. But to invest such documents with the character and incidents of commercial paper, so as to render them in the hands of bona fide holders absolute obligations to pay, however, irregularly or fraudulently issued, is an abuse of their true character and purpose. It has the effect of converting a municipal organization into a trading company, and puts it in the power of corrupt officials to involve a political community in irretrievable bankruptcy. No such power ought to exist, and in our opinion no such power does legally exist, unless conferred by legislative enactment, either express or clearly implied."

In the case of *Heckman v. Custer County, et al.*, 223 Pac. 916, the Supreme Court of this state said:

"'Assessed value' means the value fixed upon taxable property by the County Assessor and equalized by the County and State Boards of Equalization. 'Taxable value' means that percentage of the assessed value which is made the basis of computation of taxes by Sections 1999 and 2000, Revised Codes of 1921."

While Valley county has the right to provide for the expenditure of money for road purposes and to fix in its budget the amount of anticipated expenditure for any year and to levy a tax sufficient to produce that amount, it would not, in my opinion, have authority to issue warrants as evidence of indebtedness for the amount proposed to be expended and sell the same, although it would have authority to expend an amount not exceeding \$10,000 on road construction for a single purpose and to issue warrants in payment thereof.

It is, therefore, my opinion that, if the issuance of the proposed warrants will not make the total indebtedness of Valley county in excess of five per cent of the assessed valuation, as shown by the last assessment roll, and if the proposed expenditure is within the

budget for road purposes the county can issue warrants not to exceed \$10,000 for the purpose of building the proposed road. Such warrants should be issued and made payable to the State Highway Commission which can then transfer them to the bank.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.