

Bonds—Cities—Funds—Interest—Taxes.

When a city sells bonds for the construction of sewers a tax should be levied to pay the interest on said bonds and to create a sinking fund in accordance with Section 5283, Revised Codes of Montana, 1921, for their redemption.

The interest and principal of such bonds is not payable out of the one per cent levy for administrative purposes provided for in Section 5194, Revised Codes of Montana, 1921.

Joseph C. Tope, Esq.,
County Attorney,
Terry, Montana.

My dear Mr. Tope:

You have submitted to me the following statement of facts:

The town of Terry in the year 1913 issued and sold bonds in the sum of \$3,500.00 due in 20 years, redeemable in ten years, for the construction of sewers. The interest on these bonds has been paid from a bond interest fund, but no levy has ever been made for the redemption of the bonds, and there are no moneys in the treasury to apply toward the redemption of the bonds.

Upon this statement of facts you inquire if the town may make a levy, in addition to its regular one per cent levy, to redeem these bonds, or if the town must arrange to pay these bonds out of the levy for general or administrative purposes.

The bonds were no doubt issued under the provisions of Section 15 of Chapter 89 of the Session Laws of the Thirteenth Legislative Assembly, which provides that:

“To defray the cost of such public sewers, the council may appropriate moneys therefor from the general or sewer fund, or by availing itself of moneys derived from a bond issue authorized by the constitution and laws of the state.”

As bonds were issued, instead of payment being made from the general or sewer fund, the authority referred to in the above section is found in Sections 5278 to 5284, R. C. M. 1921, which were in force at the time these bonds were issued, and also Subdivision 64 of Section 5039, R. C. M. 1921, also in effect at that time.

With reference to the levy of taxes for the payment of the principal and interest of these bonds, Section 5283 supra provides:

“A tax to be fixed by ordinance must be levied each year for the purpose of paying interest on the bonds, and to create a sinking fund for their redemption. * * *”

The taxes so levied in pursuance of the above statute constitute a special fund to be used for the sole purpose of paying the interest and redeeming the bonds. (Carlson v. City of Helena, 39 Mont. 82.)

The taxes levied under Section 5194, R. C. M. 1921, which must not exceed one per centum on the assessed value of the taxable property of the town, are for general municipal or administrative purposes. This limitation is not inclusive of levies on account of bonded indebtedness. (First Nat. Bank v. Sorenson, 65 Mont. 1.)

It is, therefore, my opinion that a tax should be levied to pay the interest on said bonds and to create a sinking fund, in accordance with Section 5283, R. C. M. 1921, for their redemption, and that the interest and principal of said bonds should not be paid out of the one per cent levy for administrative and general municipal purposes provided for in Section 5194, R. C. M. 1921.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.