School Districts—Tax Levy—Indebtedness — Elections.

The issuance of warrants for current expenses of schools, where the payment has been provided for by a special tax levy authorized by a vote of the taxpaying freeholders of the district, is not the creation of an indebtedness within the meaning of Section 8, Article XIII, of the Constitution.

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My dear Mr. Reid:

You have requested my opinion whether, where the taxpaying freeholders of a school district have at an election called for that purpose authorized a special tax levy of six mills in excess of the special ten-mill levy, warrants issued in anticipation of the collection of this tax would be legal when the present indebtedness of the district already equals 3% of the assessed valuation.

It was held in an opinion by a former Attorney General (Vol. 8, Opinions of Attorney General, 378), that when a special levy in excess of ten mills has been authorized by the taxpaying freeholders of the district at an election called for that purpose and the result of the election certified to the Board of County Commissioners, that the tax thereby authorized was, in fact, levied so as to permit the issuance of warrants for current expenses in anticipation of its collection.

The question you have presented is whether the issuing of warrants in anticipation of the collection of this special tax creates an indebtedness prohibited by Section 6 of Article XIII of the Constitution, which provides, in part, as follows:

> "No city, town, township or school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding three (3) per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township or school district shall be void;" * * *

It would seem that the question of whether issuing warrants is creating an indebtedness in this state, where the payment has been anticipated by a proper levy of taxes, has been settled by the case of State ex rel. Rankin v. State Board of Examiners, 59 Mont. 557. This was a case in which the constitutionality of Chapter 13, Laws of the Extraordinary Session of 1921, authorizing treasury notes to be issued and sold to the amount of $2,000,000.00, was tested.

It was contended that the Act was in conflict with Section 2 of Article XIII of the Constitution. Our Supreme Court quoted with approval from the case In re State Warrants, 6 S. D. 518, 55 Am. St. Rep. 852, 62 N. W. 101, as follows:

> "'By general law the Legislature has provided for the levy of an annual tax for meeting the ordinary expenses of the state. By so providing, in a constitutional manner, for the levy of a sufficient tax, it has provided a revenue, to the extent of the tax, for the payment of the ordinary or current

expenses of the state. It may then make appropriation of such revenue for diverse and specific purposes, within the ordinary expenses of the state, and may authorize the issue of evidence of such appropriation in the form of warrants, without incurring an indebtedness therefor, within the meaning of said Section 2, Article XIII, of the Constitution. If this were not so, then the appropriations of each Legislature in excess of the cash actually in the hands of the State Treasurer, and in the fund from which such appropriations were made, would, to the extent of such excess, constitute the creation of a debt against the state. It is well understood that the aggregate of the general appropriations of each Legislature in this, as in other states, generally greatly exceeds the amount of actual cash in the hands of the State Treasurer when such appropriations are made. The taxes levied and in process of collection are treated as in the state treasury, though not yet actually paid over to the State Treasurer. It has been ruled in several cases, and by high judicial authority, that state funds, so in sight, but not yet in hand, may be anticipated and appropriated as though actually in the possession of the State Treasurer. * * * If the drawing of a warrant upon the state treasury is the incurring of indebtedness by the state, then the drawing of such warrant would violate the Constitution, even if there was money in the state treasury to pay it, if the constitutional limit of indebtedness has been reached; for there must always be some time intervening between the drawing of the warrant and its payment, and during such time the indebtedness of the state would be increased beyond the constitutional limit. Such an interpretation of the constitutional limitation would obviously be too hypercritical to be practicable or reasonable. It being once established, as we think it is by the authorities already cited, that the revenues of the state, assessed and in process of collection, may be considered as constructively in the treasury, they may be appropriated and treated as though actually and physically there; and an appropriation of them by the Legislature does not constitute the incurring of an indebtedness, within the meaning of Section 2, Article XIII'."

The opinion of the Court is summed up in the following language:

"In our opinion, the debt or liability intended to be prohibited by Section 2 of Article XIII of our Constitution is such as is in excess of revenues available or provided for for the appropriation years—that is, for the two years intervening between sessions of the Legislative Assembly; and not current obligations of the state arising during such period of time for which revenues are actually available or provided. The constitutional limitation has reference to such a liability as singly or in the aggregate will obligate the state to an amount in excess of $100,000 over and above cash on hand and revenues having a potential existence by virtue of existing revenue

laws. In the case before us, the funds must be considered in esse for the payment of the treasury notes, provision having been made for their levy and collection. The state, in conducting its business by such methods, is in no different position than the merchant doing business on an assured credit basis in anticipation of accounts due being paid to him at stated intervals. Revenue for which provision is already made may constructively be considered as cash on hand. (25 R. C. L., Sec. 30.) Clearly, the character of debts prohibited by the Constitution in excess of $100,000 without majority approval of the people at a general election are such as pass the limit of available cash on hand and revenue for which adequate provision has been made by law for the two-year period intervening between regular sessions of the Legislative Assembly."

It is, therefore, my opinion that issuing warrants for current expenses of schools, where the payment has been provided for by special levy authorized by a vote of the taxpaying freeholders of the school district and properly certified to the Board of County Commissioners, is not the creation of an indebtedness within the meaning of Section 6 of Article XIII of the Constitution where the warrants are not issued in excess of revenues actually provided for.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.