

School Districts—Bonds—Limitation—Percentage Valuation.

Chapter 153, laws of 1923, imposes on all school districts issuing bonds thereafter a limitation of 3 per cent of the percentage value. Where districts had previously issued bonds the percentage limitation is further limited by bonds previously issued so that the total issue shall not exceed 3 per cent of the full assessed value.

I. M. Brandjord, Esq.,
Register of State Lands,
Helena, Montana.

August 28, 1925.

My dear Mr. Brandjord:

There have been recently submitted to this office two transcripts showing proceedings had by school district No. 44, Fergus county, in issuing bonds. One transcript is for building bonds in the sum of \$11,900, and the other for furnishing and equipping a school building in the amount of \$8,100.00, making a total proposed bonded indebtedness of \$20,000.00.

Attached to each of these transcripts is a certificate by the county treasurer of Fergus county, certifying to the following facts:

First: That the full assessed valuation of the district, as shown by the last assessment, is \$1,229,268, and that the percentage valuation upon which taxes are paid is \$399,614.00; that the bonded indebtedness of \$12,914.25 is made up as follows: An issue of \$1,100.00 dated September 2, 1910; a second issue of \$6,500.00 dated October 1, 1909; and a third issue of \$5,314.25 dated October 15, 1924.

These transcripts were submitted with a view of obtaining the approval of this office and of having the state land board bid upon these two issues.

The proceedings were disapproved for the reason, as stated in my letter of May 12, 1925, that the provisions of subdivision 2 of section 1 of chapter 153, laws of 1923, under which these bonds were issued, authorize the district to incur a bonded indebtedness "not to exceed three per centum of the per centum of the assessed value of the property upon which taxes are levied and paid in said district exclusive of indebtedness incurred before the passage of this act."

As the district issued \$5,314.25 worth of funding bonds on October 15, 1924, this indebtedness would necessarily be deducted from the limitation of 3 per cent of the per centum of the assessed value, and as each of the issues exceed the difference between this amount and 3 per cent of the percentage value the district would be exceeding its debt limit as prescribed by the provisions of chapter 153.

The district, through Mrs. Morrow, chairman of its board of trustees, now protests this ruling claiming that it works a great hardship upon her district and others and insists that the provisions of this chapter should be so construed, if possible, as to permit the district to issue additional bonds, provided that the total amount issued when added to bonds heretofore issued, does not exceed 3 per cent of the full assessed value of the property: in other words, that chapter 153 imposes no limitation whatever upon a district as to the amount of indebtedness which it can incur after the passage of this chapter, provided the total debt does not exceed 3 per cent of the full valuation of district property.

I shall, therefore, give to the provisions of this chapter further consideration with respect to whether it does impose a limitation upon the district.

Chapter 153 was approved March 12, 1923, and took effect on March 1, 1924. Subdivision 2 of section 1 of this chapter, as set out in the session laws of 1923, is not a true copy of the enrolled bill. I shall, therefore, quote from the enrolled bill the portions which is applicable, and include in brackets the portion that is omitted from the session laws of 1923:

"The board of trustees of any school district within this state shall, * * * submit to the electors of the district the question whether the board shall be authorized to issue coupon bonds to a certain amount, not to exceed three per centum (of the per centum) of the assessed value of the property upon

which taxes are levied and paid in said district exclusive of indebtedness incurred before the passage of this act; providing that the total amount of indebtedness shall not exceed three per centum of the full assessed value."

If the construction contended for, that is, that the district is only limited to 3 per cent of the full assessed value, is correct, the act has no effect as a further legislative limitation upon districts to incur indebtedness since the constitution prescribes a limit of 3 per cent on the assessed value, which has been construed to mean the full assessed value. (Galles vs. Board of County Com'rs, 56 Mont. 387.)

It is an elementary rule of statutory construction that one portion of an act is not to be given the effect of nullifying another portion if any other construction consistent with giving effect to both provisions is possible.

The legislature did not create a limitation in one breath and wipe it out in the next breath, so the portion following the proviso, to-wit, "that the total amount of indebtedness shall not exceed three per centum of the full assessed value," must be construed with "not to exceed three per centum of the per centum of the assessed value * * * exclusive of indebtedness incurred before the passage of this act."

If the legislature had intended that all school districts should, after the taking effect of chapter 153, be limited only to 3 per cent of their full assessed value, why was any reference made to the "per centum value upon which taxes are levied and paid" as the other limitation was taken care of by the constitution?

The limitation of 3 per cent of the full assessed value was only intended to apply to those districts which had, prior to the taking effect of chapter 153, issued bonds in such an amount that a further issue to the extent of the percentage valuation would, when added to the previous issue, exceed 3 per cent of the full assessed value. In other words, legislation could not affect the bonded indebtedness of districts already incurred, but could limit all districts as to future issues and disregard former issues, except where the former issue and proposed issue would exceed the valuation as fixed by the constitution.

To illustrate: Suppose school district No. 44 had, prior to the passage of chapter 153, issued bonds to the extent of \$30,000 (its full assessed value being \$1,200,000, and 3 per cent thereof being \$36,000), it could still issue bonds in the amount of \$6,000 because \$30,000 and \$6,000 do not exceed \$36,000.

The legislature did not wish to entirely cut off districts—which had issued bonds to the extent of the percentage valuation previous to the taking effect of chapter 153—from issuing any further bonds. It took into account the possible necessity of some further bond issues by such districts and so excluded former bond issues and placed the limitation on all alike as to future issues.

While this apparently gives to the district that had issued a large amount of bonds prior to the passage of the act some advantage over a district that had not issued bonds before the passage of the act, yet the

limitation as contained in the act is the same as to both insofar as it affects future issues, that is, each are thereafter limited to 3 per cent of the percentage value, but one may be limited by the amount of bonds previously issued because, adding what is proposed to be issued under the per centum valuation, it would exceed 3 per cent of the full valuation.

The apparent advantage is not by reason of the provisions of the act as to future issues, but by reason of the fact that a district had previously issued bonds.

The act is, in my opinion, a limitation upon districts issuing bonds after its passage and to give it the construction contended for would nullify its clear intent.

Very truly yours,

L. A. FOOT,

Attorney General.