

**Bonds—Funds—Sinking Funds—Taxation.**

In making a levy under section 4622, R. C. M. 1921, as amended, only the total amount necessary to cover interest and principal need be included but the resolution fixing this amount should set forth the number of mills included for each separate bond issue.

Frank Woody, Esq., December 7, 1925.  
Counsel for Montana Taxpayers' Association,  
Helena, Montana.

My dear Mr. Woody:

You have requested an opinion regarding the construction to be given section 4622, R. C. M. 1921, as amended by chapter 99, laws of 1925, and the manner in which tax levies for both sinking and interest funds should be made thereunder by boards of county commissioners.

Your letter states:

"Examining the tax levies made by the boards of county commissioners of the several counties for such purposes, for the fiscal year beginning July 1, 1925, and ending June 30, 1926, it is apparent that the boards of county commissioners of some of the counties, while attempting to comply with the provisions of such section, as amended, have failed to understand the provisions thereof, while the boards of county commissioners of a large number of the counties have made no effort whatever to comply with the provisions thereof, simply ignoring the same, and have continued to make such levies in the same manner as in past years.

"We, therefore, feel that it is necessary, in order to secure a compliance with the provisions of such amended section by the boards of county commissioners of all of the counties, and to insure uniformity in the manner of making the levies for such purposes throughout the state, that such amended section should be construed and interpreted by you and the manner in which such levies should be made plainly stated.

"With regard to bonds issued on or after May 1st, 1923, the provisions of such amended section seem to be plain and clearly understood, except in one respect. Section 4621, as amended by chapter 21, session laws 1923, and which amendment took effect on May 1, 1923, provided that all bonds thereafter issued should be serial bonds, and that a certain portion thereof should be paid each year after issuance, the amount to be paid each year being determined by dividing the total amount to be issued by the total term for which the same were to run. For instance, if the total amount to be issued should be \$200,000 and the term 20 years, \$10,000 thereof would be required to be paid each year for 20 years. Such section, as amended by chapter 99, session laws of 1925, provides that all bonds issued after June 30, 1925, shall be either serial or amortization bonds,

as such bonds are defined in chapter 38, session laws 1923. Consequently, each annual levy must be fixed at such a rate as will produce sufficient funds, if the bonds are serial, to pay all bonds becoming due during the ensuing year as well as one year's interest on all outstanding bonds, and at such a rate, if amortization, as will produce sufficient funds to pay the total amount becoming due during the ensuing year.

"The only doubtful question is regarding the number of levies that must be made. For instance, suppose a county has only one issue or series of bonds, must two levies be made each year, one for the purpose of paying the bonds becoming due during the ensuing year, and a separate and distinct levy to pay one year's interest on all outstanding bonds, or need only one levy be made to raise the full amount necessary to pay all bonds becoming due during the ensuing year as well as the one year's interest on all outstanding bonds? Or, suppose a county has two separate and distinct issues or series of bonds, that on the first issue or series there will become due during the year 1925-1926 bonds to the amount of \$5,000 and interest to the amount of \$4,000, a total of \$9,000 for principal and interest, while on the second issue or series there will become due during such year bonds to the amount of \$10,000 and interest to the amount of \$9,000, making a total of \$19,000 for principal and interest, should the board of county commissioners:

"1. Make two levies for the first issue or series of bonds, one levy to raise funds to pay the \$5,000 principal of the bonds of the first issue or series becoming due during the ensuing year, and another separate and distinct levy to raise funds to pay the \$4,000 interest becoming due during the ensuing year on the bonds of such first issue or series; and also make two levies for the second issue or series of bonds, one to raise funds to pay the \$10,000 principal of the bonds of the second issue or series becoming due during such year, and another separate and distinct levy to raise funds to pay the \$9,000 interest becoming due during such year on the bonds of such second issue or series; or

"2. Make a separate and distinct levy for each issue or issues, one levy for the first issue or series of bonds to pay both the \$5,000 of principal and the \$4,000 of interest becoming due on such first issue or series of bonds during the ensuing year, and another separate and distinct levy to pay both the \$10,000 of principal and the \$9,000 of interest becoming due on the second issue or series of bonds during the ensuing year; or

"3. Make two separate and distinct levies, one to pay the principal of \$15,000 becoming due on both issues or series of bonds during the ensuing year, and the other to pay the interest of \$13,000 becoming due on both issues or series of bonds during such year; or

"4. Make one levy only, such levy to pay the \$28,000 becoming due during the ensuing year for principal and interest of both issues of series of bonds."

You state that in making levies for the years 1925 and 1926 the board of county commissioners of one county adopted the first method, while the board of county commissioners of another county adopted the second method, but that a majority of the counties adopted either the third or fourth method.

Section 4622, R. C. M. 1921, as amended by chapter 99, laws of 1925, deals only with a levy sufficient to cover interest and for the redemption of the bonds issued by the county.

The section then designates what levy should be made, in addition to the interest, with respect to bonds issued prior to May 1st, 1923, and bonds issued subsequent thereto, and what levy should be made in case amortization bonds are issued.

The date (May 1, 1923) is made the dividing line by reason of the provisions of chapter 21, session laws of 1923, which took effect on that date and limited all bonded indebtedness thereafter incurred, whether original or funding issues (except to fund warrants to another county in adjustment of indebtedness) to five per centum of the assessed value upon which taxes are computed, and except on a vote of the electors, but permitted bond issues to be made to retire bonds or warrants without a vote and to the amount of 5 per cent of the full assessed value where the bonds were made payable and redeemable in equal annual installments, the amount of installments to be paid in each year to be determined by dividing the total amount of the issue by the number of years for which the bonds were to run.

Prior to May 1, 1923, very few counties had issued serial bonds payable in equal installments during the whole period of the issue.

Section 4622, as now amended by chapter 99, laws of 1925, undertakes to compel county officers charged with the levy of taxes to make a sufficient levy for the payment of all bonded indebtedness, whether principal or interest, when it becomes due. Where the bonds were issued prior to May 1, 1923, the levy must be sufficient to pay interest on the whole issue for one year and to pay any portion of the principal becoming due that year. In case bonds are payable after a certain number of years, then, in addition to one year's interest, there must be levied for the creation of a sinking fund an amount obtained by dividing the total issue by the total number of years the issue is to run, the purpose being not to impose a hardship by requiring the whole issue, in the case of bonds not yet due, to be paid in the remaining years of the issue but to require provision for a proportionate payment when the issue becomes due and permit a re-issue for the remainder on the serial or amortization plan.

As to bonds issued after May 1, 1923, the levy must be high enough to pay one year's interest on the whole issue remaining unpaid and any portion of the principal becoming due that year, and, in case the issue is not made payable in equal annual installments during the period it is

to run, then the levy must be high enough in each year to raise, in addition to the annual interest, a sum obtained by dividing the whole issue unpaid by the number of years the issue has yet to run.

By following this provision the whole issue will be paid at the end of the term out of the sinking fund thus created. The levy, in case of amortization bonds, needs no explanation. The levy must be sufficient to pay, when due, each semi-annual installment representing both principal and interest.

You state that the only doubtful question is as to the number of levies to be made, that is, that in one county two levies for each issue were made—one for interest and another for principal, and that in another county a separate levy was made for each separate issue, covering both interest and principal. In another county a separate levy was made to cover all interest obligations, and another levy was made to cover all principal to be raised on all issues outstanding, while in still another county only one levy was made covering both interest and principal on all issues.

The statute does not provide for a separate levy for each issue, nor a separate levy for interest and principal. It merely speaks of a levy sufficient to raise the specified amount. It says, "The Board of County Commissioners \* \* \* must levy a tax" for the payment of interest and redemption of the bonds, "*If such levy*" is made for one issue the amount must be computed one way; if for another issue it must be computed another way, and still another way for a third issue. The statute concerns itself with the amount to be raised and not with the number of levies to be made.

In computing the amount of the levy it would, of course, be necessary for the board to determine the amount necessary for interest and payment, or redemption, of each separate issue, and the resolution of the board must clearly show what amount was included in the total levy for each particular outstanding issue, to cover interest and sinking fund, as follows:

Bond interest and sinking fund 1914 issue—2 mills  
Bond interest and sinking fund 1915 issue—1½ mills  
Bond interest and sinking fund 1918 issue—2 mills  
Bond interest and sinking fund 1920 issue—2 mills  
Bond interest and sinking fund 1922 issue—1⅓ mills

The county treasurer is required to keep a separate interest and sinking account for each issue and must deposit the amount collected to the credit of the proper interest and sinking fund which merely means that he shall give proper credit of the amount collected to each fund. In determining the amount he has merely to look to the resolution of the board fixing the several amounts included in the total.

It is, therefore, my opinion that only one levy should be made covering both interest and sinking fund for all issues but, in the resolution making the levy, the county commissioners should set out in detail the

number of mills or fractional mills included for each issue. This should be the total amount which the statute requires to be raised in each separate instance.

If the board of county commissioners fail to make a levy in any year sufficient to raise the necessary amount to meet interest and principal payments, as required by section 4622, R. C. M. 1921, as amended, or to place in the sinking and interest fund of any series the proper amount as therein provided, a writ of mandate may be applied for by any taxpayer, or the holder of any bonds, to compel the proper levy.

It may be argued that a separate levy is necessary in each case in order to determine whether the board has included the proper amount for each particular issue. However, reference to the resolution of the board fixing the levy would show what amount had been included in the total computation for each separate issue and, in effect, would constitute a separate levy for each issue.

I believe the county boards will not hesitate to make a sufficient levy to cover all interest and principal payments on bonds payable serially, whether issued before or after May 1, 1923; also a sufficient levy to meet all amortization bond payments.

The difficulty will be to get boards to comply with the requirements of this chapter with respect to the creation of sinking funds for term bonds whether issued before or since that date. Under present conditions it is difficult to invest sinking funds safely and at the same time secure a satisfactory rate of interest. However, this is not an excuse for failure to comply with the plain statutory mandate requiring the creation of a sinking fund with which the bonds must be paid, and the legislature fixed the method for providing for their payment, not by postponing the date of payment but by providing a fund out of which they can be paid when due.

Counties should refund all issues of term bonds with serial or amortization bonds as soon as their redeemable period arrives.

It is my opinion also that the provisions of section 4622, R. C. M. 1921, as amended by chapter 99, laws of 1925, are mandatory and not merely directory.

Very truly yours,

L. A. FOOT,

Attorney General.