Interest—Coupons—Bonds—County Treasurer.

The holders of interest coupons on county bonds agreed to be paid at some point without the State of Montana may resort to the courts to enforce the agreement if such an agreement is valid.

L. Q. Skelton, Esq., January 28, 1925.
State Examiner,
Helena, Montana.

My dear Mr. Skelton:

You have requested my opinion whether there is any relief in the case of the holder of interest coupons of county bonds being asked to present the same to the county treasurer's office for payment when at the time of the issuance of the bonds it was agreed that the interest should be paid in New York.

Our statute regulating the payment of interest coupons on county bonds is section 4623, R. C. M., 1921, which provides as follows:

> "The county treasurer must pay the interest upon the bonds authorized to be issued under the provisions of this article when the same become due, on the presentation to him of the proper coupons therefor; and all bonds and coupons which may be paid by the county treasurer must be returned by the treasurer to the

county clerk at his next settlement after such payment; and the county clerk must cancel said bonds and coupons in the manner provided by law for the cancellation of county warrants."

And section 4694, which provides as follows:

"Such bonds shall be in denomination of one thousand dollars, shall bear a rate of interest to be fixed by the board, not exceeding seven per cent per annum, represented by interest coupons payable semi-annually at such place and at such times as shall be determined by the board, and all of such bonds shall become due and payable in not less than five nor more than ten years from the date thereof, the date of maturity to be fixed by the board."

The last section has reference to bonds issued to provide relief for drought sufferers. There is a difference of opinion among the adjudicated cases as to whether, when the statute is silent as to the place of the payment of bonds, they may be made payable without the state in which they are issued.

In People vs. County, 22 Ill. 147-151, the court in speaking of this question said:

"It is objected that the county had no right to issue bonds or other obligations, payable at any other place than at the county treasury. This court held in the case of Prettyman v. The Board of Supervisors of Taxewell County, 19 Ill. R. 406, that it was only by virtue of the act of February, 1857, authorizing the county courts of each county which had subscribed to the Tonica and Petersburg road to make the interest of their bonds payable at any place they might choose. That act only applied to subscriptions to that particular road, and can have no application to any other. And it was there held that the county court had no power to issue bonds payable in the city of New York, for want of express authority by legislative enactment. States, counties and coroporations, created for public convenience only, are not required to seek their creditors to discharge their indebtedness, but when payment is desired, the demand should be made at their treasury. That is the only place, at which payment can be legally insisted upon, and it is the only place where the treasurer can legally have the public funds with which he is intrusted. To authorize the auditor to draw his warrants on the treasurer, payable in a sister state or in a foreign country, necessarily imposes an obligation on the treasurer, to provide funds at that place, to meet them. And his duties requiring him at the treasury, would require the employment of agents, the transmission of the funds at a risk of loss, and at a considerable expense, in charges, insurance and discounts, which are not incident to its payment at the treasury. And the same reasons apply with equal force, to cities, counties and public corporations, of a similar character. The legislature has

conferred no such general power on such bodies, and in its absence they have no power to make their indebtedness payable at any other place than at their treasury."

The same court in the case of Johnson vs. County of Stark, 24 Ill. 75, 92, said:

> "This case presents the question, whether instruments, evidencing their indebtedness payable specifically at any other place, are void, or whether they may be upheld as payable at their treasury. This coupon on its face purports to be payable at the city of New York. The doctrine is well recognized, that in exercising a power, all acts performed in excess of, or beyond the power delegated, must be rejected as unwarranted; and if, after their rejection, there has been enough done to show a proper execution of the power, the act will be sustained, irrespective of the acts beyond the power delegated. But, on the contrary, if the acts performed beyond the authority conferred, are so inseparably connected with the acts properly performed, that by their rejection the power remained unexecuted, then the whole transaction must be rejected as void. When tested by this rule, it will be perceived that this coupon may be sustained as valid, and payable at the treasury of the county. The law authorized the county to issue it, and requires no place of payment to be named. And where none is specified, it, by operation of law, is payable at the treasury. If this coupon had not contained the language, 'at the city of New York,' it would have been a legal instrument, strictly conforming to all the requirements of the law authorizing counties to issue evidences of indebtedness. If, then, this unauthorized portion of the coupon was rejected, it would be in conformity to the law, and for the purpose of upholding it, the law will reject that portion as surplusage. This doctrine was announced by the very able district judge of United States district court for Wisconsin, in the case of Mygatt vs. The City of Greenbay, which was precisely similar to this case."

To the same effect is the case of Friend vs. City of Pittsburgh (Pa.) 18 Atl. 1060. Other cases have reached the conclusion that where no place of payment is designated in the statute it is competent to make them payable outside the state.

Board of Supervisors vs. Galbraith, 25 L. Ed. 410;
Lynde vs. County of Winnebago, 21 L. Ed. 272;
Skinker vs. Butler Co. (Mo.), 20 S. W. 613.

The supreme court of this state has not passed upon this question. If, under our statute the counties have a right to agree to pay the interest without the state, then the coupon holders may enforce the provision of the contract by a resort to legal proceedings the same as any other contract may be enforced.

Very truly yours,
L. A. FOOT,
Attorney General.