

School Districts—Bond Issues.

Where a district has voted bonds in excess of the 3% limit the board is without authority to reduce the issue so as to come within the limit.

June 5, 1928.

R. S. McKellar, Esq.,
County Attorney,
Glasgow, Montana.

My dear Mr. McKellar:

Your letter relative to the bond issue of school district number 2 of your county was received.

It appears that the matter submitted to the electors was a proposition to issue bonds in the amount of \$30,000, which was approved at the election by a small majority. It now appears that \$30,000 will probably be in excess of the 3% of the assessed valuation of the property. The question submitted is whether the district could issue bonds for a less amount, provided it was within the 3% limit. A debt is not created until bonds are delivered to the purchaser, and that time will be the date on which the district will be required to show that the indebtedness is within its assessed valuation. It is my opinion, however, that the district may not issue bonds in a less amount than that authorized by the election where the amount authorized is found to be in excess of the constitutional limits.

In the case of *Thornburgh v. School District No. 3*, 175 Mo. 31, 75 S. W. 81, the court said:

"It is contended, however, that, in case the amount of the bonds is found to be in excess of the constitutional limit, the court should scale them down to the amount that was lawful * * *. That course would be equivalent to the making of a new contract for the parties—not only a contract which the parties themselves did not make, but one which we have no means of knowing they would have made. The voters of the district, who were to be first consulted, might be very willing to build a new schoolhouse of a style to cost \$3,500 but unwilling to build one of a style to cost only \$1,900. We can gather from the meager record of the school board in evidence that the proposition involved the selling of an old schoolhouse and the building of a new one. How can we assume in such case that the voters would not have preferred to keep the old schoolhouse in preference to building such a new one as \$1,900 would pay for?"

Our supreme court in the case of *Jordan v. Andrus*, 27 Mont. 22, used the following language:

"Not all the \$8,000 indebtedness proposed to be incurred would be without the three per centum limit. But the object for

which the bonds were voted is single. The debt would be indivisible, and the part within the limit is not separable from that without."

This case was cited in *Butler v. Andrus, et al*, 35 Mont. 583, 90 Pac. 785.

Therefore, it is my opinion that school districts, cities and towns may not issue bonds to the legal limit where the indebtedness authorized by vote of the qualified electors is in excess of such limit.

Very truly yours,

L. A. FOOT,

Attorney General.