

**Budget Act—Levies—Bonds—Warrants—Redemption.**

Road warrants issued since May 1, 1923, cannot be re-funded without a vote of the electors of the county.

The budget act of 1929 requires estimates for interest and debt redemption of bonds and warrants. A levy for paying registered warrants should be made under this classification and not under road fund levy.

H. G. Albert, Esq.,  
County Clerk and Recorder,  
Ekalaka, Montana.

July 2, 1929.

My dear Mr. Albert:

You have submitted to me for an opinion the following question:

“The board of county commissioners is desirous of obtaining your opinion regarding the issuance of refunding bonds without submitting the question to a vote of the people, such bonds to be exchanged for outstanding, registered warrants on the road fund of the county.

“On the first question mentioned, do you agree with an opinion found in Volume 7, Opinions of Attorney General, Page 226?”

The opinion referred to holds that the substitution of one evidence of indebtedness for another does not create debt nor the borrowing of money. Consequently, it was not necessary to submit to the electors the proposition of issuing refunding bonds to be exchanged for outstanding county warrants. With all of which I agree. The opinion refers to Sections 2905 to 2908, R.C.M., 1907. These sections, now 4614 to 4617, R.C.M., 1921, have been amended since this opinion was written, the amendment being found in Section 4614 et seq. of the 1927 supplement of the 1921 codes. This section (4614) now provides:

“ \* \* \* that no such bonds (except bonds to fund or refund outstanding warrants or bonds issued prior to May 1, 1923, and except bonds for the purpose of enabling a county to fund its outstanding warrants or orders issued to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary line) shall be issued, negotiated or sold for any purpose whatever, or exchanged for outstanding warrants, orders or bonds, without the approval of a majority of the electors of such county, qualified as provided in Chapter 98, Session Laws 1923, voting at an election at which the question of issuing and selling or exchanging such bonds shall be submitted to the electors of such county, and which election shall be held in accordance with the provisions of Sections 4719 to 4722, inclusive, of the Revised Codes of Montana, 1921, and shall be governed and controlled thereby.”

This section also limits the amount of funding bonds that may be issued, except when deemed an emergency, beyond 5 per cent of the percentage of the full and true value upon which taxes are levied and paid.

Chapter 98, Laws of 1923, referring to fixing the qualification of electors by this section, was amended by the Twenty-first Legislative Assembly. The change made by the amendment eliminated the State of Montana and counties from the requirement of submitting bond elections to taxpaying electors. This change was not intended to and does not, in my opinion, relieve the county from the necessity of submitting to the electors of the county the proposition of issuing bonds to fund warrants issued since May 1, 1923, other than those issued to liquidate indebtedness to another county incident to a change in boundary lines and the creation of a new county.

Therefore, you are advised that funding bonds cannot be issued in exchange for outstanding road warrants without the vote of the qualified electors of the county approving the same, except as to such warrants included within the brackets within the above quotation from Section 4614.

You have also submitted the question as to whether the county commissioners, in the event that they cannot issue bonds in exchange for these warrants, are compelled to fix a levy sufficient to retire all such warrants this year. You state that the maximum levy of five mills for road purposes on the taxable valuation would raise only \$12,000, and that your amount of outstanding road warrants is approximately \$25,000. Answering this question, you are advised that it will not be necessary to do so providing the amount certified for interest and debt redemption on account of such outstanding registered warrants is equal to the amount that would be produced to the credit of the road fund by making a levy of the amount allowed by law for road purposes.

My reasons for the foregoing answer are as follows:

Classification 4 of the estimates, appropriations and expenditures under the budget act (Chapter 148, Laws of 1929) covers interest and debt redemption. Under this head proposed expenditures for interest and redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner. The county commissioners must fix a levy for each fund necessary to raise the amount of estimated expenditures.

As warrants against a particular fund, such as the road fund, can only be paid out of the levy authorized by law for that purpose, the total of those outstanding might exceed the limit of the authorized levy for a year and require several years to retire them. The intention of the old budget act was to limit expenditures to estimates. As to whether holders of warrants issued under such act in excess of fixed estimates acquired any vested rights in the fund when registered see *State vs. District Court*, 62 Mont. 275, 280. The warrant holder cannot be injured if the same amount produced by levy for road purposes is

made applicable to his warrants by some other levy. If all warrants against the road fund cannot be paid by making the greatest possible levy permitted for a year the road warrant holder cannot be injured by failure to make provision for paying all outstanding warrants in that year under the interest and redemption estimates of the present budget act.

Very truly yours,

L. A. FOOT,  
Attorney General.