

Opinion No. 299**Schools—School Districts—Indebtedness, Limitation of.**

HELD: A school district, with or without a favorable vote of the taxpayers concerned, may not incur indebtedness, bonded or otherwise, which in the aggregate exceeds 3% of the value of the taxable property in such school district.

August 11, 1933.

On July 17, 1933, the Board of Trustees of School District No. 1 of Lewis and Clark County requested your opinion on the following questions, to-wit:

"1. Under an act of congress known as the Industrial Recovery Act, the

federal government will donate 30% of the cost of certain municipal improvements, which the board understands includes school districts, if approved by the representative of the government, and advance the balance upon the condition that such balance be repaid at the rate of 6% of the principal each year for 25 years, which will cancel the obligation. If the Board makes application for such aid and it is approved, will it be necessary to submit the question of incurring such obligation to the electors of the school district in the manner provided by Chapter 25, Laws of 1931, or any other law?

"2. If the obligation to pay the government said balance of 70% of such government aid should, together with the present bonded indebtedness of the district, exceed three per cent of the assessed valuation of the district, could the district in view of the provision of said act of Congress, and section 6, Article XIII, of the state constitution incur such obligation either with or without a vote of the qualified electors of the district?"

Recently, because of the importance of the matter, you asked us to give you an opinion upon the questions of law involved therein.

Section 202 of the National Industrial Recovery Act provides, among other things, that "the Administrator, under the direction of the President, shall prepare a comprehensive program of public works, which shall include among other things the following: Construction, repair, and improvement of public highways and park ways, public buildings, and any publicly owned instrumentalities and facilities."

So much of Section 203 of the National Industrial Recovery Act as is pertinent here, is as follows:

"With a view to increasing employment quickly (while reasonably securing any loans made by the United States) the President is authorized and empowered, through the administrator or through such other agencies as he may designate or create, (1) to construct, finance, or aid in the construction or financing of any public works project included in the program prepared pursuant to section 202; (2) upon such terms as the President shall prescribe, to make grants to States,

municipalities, or other public bodies for the construction, repair, or improvement of any such project, but no such grant shall be in excess of 30 per centum of the cost of the labor and materials employed upon such project; (3) to acquire by purchase, or by exercise of the power of eminent domain, any real or personal property in connection with the construction of any such project, and to sell any security acquired * * * or to lease any such property with or without the privilege of purchase."

Subdivision (a) of Section 1, Chapter 147, Laws of 1927, is as follows: "The Board of Trustees of any school district within this state is hereby vested with the power and authority to issue and negotiate coupon bonds on the credit of the school district for any one or more of the following purposes: (a). For the purpose of building, enlarging, altering, repairing, or acquiring by purchase one or more school houses in said district; furnishing and equipping the same, and purchasing the necessary lands therefor."

Section 8 of said Chapter 147 provides that "school district bonds * * * shall not be issued unless authorized at a duly called election at which the question of issuing such bonds was submitted to the electors of the school district; and no such election shall be called unless there has been presented to the Board of Trustees a petition asking that such election be held and such question be submitted, signed by not less than twenty per centum (20%) of the qualified registered electors residing within the school district, who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state, county and school district taxes."

If it be not in the treasury it is only through an additional tax levy or a sale of its bonds that a school district may obtain money with which to build or repair school houses. To authorize the issuance of such bonds a substantial compliance with the provisions of section 8, supra, is necessary. (*Hausworth v. Mueller*, 25 Mont. 156; *Hay v. Alderson*, 49 Mont. 387; *Tax Commission Case*, 68 Mont. 450). That the board of trustees may have to deal with the federal government does not alter the situation. School boards have only

such powers as are expressly granted by statute and such as are necessarily implied from those expressly granted. (*McNair v. School District No. 1*, 87 Mont. 423).

Section 6 of Article XIII of the Constitution reads, in part, as follows:

"No city, town, township or school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding three (3) per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township or school district shall be void * * *."

In view of the prohibitory character of the language just quoted, it is plain that a school district, with or without a favorable vote of the taxpayers concerned, may not incur indebtedness, bonded or otherwise, which in the aggregate exceeds three per cent of the value of the taxable property in such school district. The constitutional limitation is clear and unambiguous and means just what it says, namely, that no indebtedness can be contracted in any manner or amount, for any purpose, in excess of the prescribed limit. (*State v. City of Helena*, 24 Mont. 521; *Butler v. Andrus*, 35 Mont. 575; *Lepley v. City of Fort Benton*, 51 Mont. 551; *State ex rel. Henderson v. Dawson County*, 87 Mont. 122).