

the fact that a large amount of the tax had been paid under protest."

We assume from your statement of facts that the question of three per cent limit of indebtedness placed upon school districts by the Constitution, is not involved. If this assumption is correct it is our opinion that the county treasurer may legally register warrants of school districts so long as the amount of the warrants issued does not exceed the budget.

If, however, the warrants issued exceed the constitutional limit unless the amount of the protested taxes are taken into account, then the warrants would be void and the treasurer is without authority to register them.

In the recent case of John Farbo v. School District No. 1 Toole County, 95 Mont. 531, our Supreme Court held that if the total indebtedness of a district, less the cash in the treasury to the credit of the district, had reached the three per cent limit any additional warrants issued would be void; that no delinquent taxes or other assets, other than cash, could be taken into account in figuring the three per cent limit of indebtedness. The court said in part: "The fact is, the warrants represent an indebtedness of the district; that the district may some day receive the amounts due on delinquent taxes does not alter the situation. To say the district does not owe the debt because it has assets upon which it may some day realize 'confuses indebtedness of the district, as used in the Constitution, with the question of insolvency. The Constitution does not deal with * * * insolvency but with indebtedness'."

In his work on Evidence, Dean Wigmore likens the question to a person engaged in an obstacle race. The same illustration may apply here. We have passed the obstacle of the constitutional limitation and will hereafter consider that no question of limitation of indebtedness under the Constitution is involved.

The next question is in construing the statutory limitation—are any deductions permissible or required—to which the answer is made that no deductions are required, that no deductions are to be made in computing these statutory limitations.

Chapter 82 of the Laws of 1925 provides: "Such warrants shall show for what purpose the money is required,

Opinion No. 432

School Districts—Taxes Paid Under Protest—Warrants—County Treasurer.

HELD: When taxes have been paid under protest and when the three per cent limit of indebtedness placed upon school districts by the constitution is not involved, the county treasurer may legally register school district warrants, so long as the amount of the warrants issued does not exceed the budget and subject to the limitations of R. C. M. 964, as amended.

When, however, the warrants issued exceed the constitutional limitation unless the amount of the protested taxes are taken into account, then the warrants would be void and the county treasurer is without authority to register them.

January 19, 1934.

We acknowledge receipt of yours of December 15th, submitting the following matter for our opinion: "A critical situation has developed here in regard to the finances of two of the school districts. The Northern Pacific and Milwaukee railroad companies have protested school levies in these districts, leaving insufficient funds to operate these schools without registering warrants. The county treasurer asked my opinion as to whether he might register warrants for the full 90% of the school budget, in view of

and no such warrant shall be drawn unless there is money in the treasury to the credit of such district; provided, that school trustees shall have the authority to issue warrants in anticipation of school moneys which have been levied, but not collected, for the payment of current expenses of schools, but such warrants shall not be drawn in any amount in excess of the sum already levied." This statute is a statute of limitation and only limits when warrants are drawn to the fullest extent of the taxes levied. The limitation is not based on taxes collected, or to be collected; nor does the question of whether taxes are paid under protest make any difference in construing this statute.

A similar situation prevails in connection with the construction of Chapter 162, Laws of 1933, amending R. C. M. 1012. That statute again reiterates the principle that warrants may issue in anticipation of collections of school moneys for which levies have been made. It then provides for a different limitation. This limitation is ascertained as follows: First, Add cash on hand at the beginning of the year; second, 90% of all taxes levied by the school district; and third, All revenues received from all other sources during the fiscal year. Warrants in any year cannot exceed the sum of these three items.

The law further provides that in computing these items prior to the time when the revenues in the third class districts are not fixed, the revenues for the prior year shall be used as the basis. In this statute, also, no deductions are made for taxes paid under protest; nor do the limitations discussed in the Farbo case, to be considered in connection with the constitutional limitation, in any manner affect the situation and they are not to be considered.

The effect of each statute or constitutional provision is to be considered by its own independent rules and requirements, although warrants cannot be issued if prohibited by either of the statutes or the constitutional provision herein referred to.

This matter is discussed at length for the reason that if we did not do so this opinion, considered from some other angle where a different question was involved, might be misconstrued.