

Opinion No. 41.**Counties, Limit of Indebtedness—
Claims — Schools — District High
School Warrants, Not A County
Obligation—Bonds, Remedy of
Bondholders of Defaulted—
County Commissioners.**

HELD: 1. Where a county is over its constitutional limit of indebtedness, claims based upon contract would be illegal and warrants drawn in excess thereof would also be illegal.

2. District High school warrants are not a county but are a school district obligation.

3. Holders of defaulted county bonds cannot legally tie up cash on hand in county funds, other than the sinking fund, but the board of county commissioners may, at their instance, be required by the district court to make a tax levy to pay such bonds as they fall due, together with the accrued interest.

February 9, 1935.

Mr. F. V. Watts
County Attorney
Roundup, Montana

In a letter to us of recent date you stated that because of press of court work you were not in a position to answer at once certain questions asked of you by the board of county commissioners of Musselshell County, and requested us to deal with the matter, if possible.

The questions propounded are:

"1. Is Musselshell County over the constitutional limit of debt? The valuation of the county for the year 1934 is: Full value of all property \$9,731,075. Taxable value \$3,412,546. Outstanding bonds \$776,000.

"2. If we are over the constitutional limit of debt, would it be proper and legal to file and approve claims against the county, if there

is no cash in the fund upon which the claims are allowed, providing the warrants are not issued until there is cash in the fund to pay the same, or should not any claims be approved until the cash is on hand. If the procedure herein stated is not correct, would you kindly advise us of the proper procedure.

"3. Are District High School Warrants a county obligation, and can the trustees of school districts maintaining high schools legally issue warrants against the High School Fund, when there is no cash in the fund and the county is over the constitutional limit of debt? Can the county treasurer register said warrants?

"4. Can holders of defaulted bonds legally tie up cash on hand in county funds, other than the Sinking Fund?

"5. Is there anything illegal in the resolution?"

We will attempt to answer the questions in the order in which they have been asked.

1. Yes. The constitutional limit of indebtedness is five per cent of the assessed value of all property in the county subject to taxation. (Sec. 5, Art. XIII of the Constitution.) Musselshell County's bonded indebtedness, leaving out of consideration entirely outstanding warrants, is practically eight per cent of such assessed value.

2. The county being considerably over its constitutional limit of indebtedness claims based upon contract would be illegal and warrants drawn in payment thereof would also be illegal. "The power of a county to incur indebtedness cannot be exercised in violation of any prohibition or limitation thereof, either express or implied; and according to the express terms of some constitutional provisions, any indebtedness or liability incurred contrary thereto is void. When the limit prescribed by constitution or statute has been reached, the county has no further capacity to make contracts out of which additional burdens may arise. As to such contracts it may be said that the county has no existence, and that it is under the same legal obligation not to pay claims based on such illegal

contracts as it is to pay its legal and valid obligations. Persons entering into contracts with a county are bound to take notice of constitutional and statutory limitations on county indebtedness. A county by receiving benefits is not estopped to assert the invalidity of warrants issued in excess of the constitutional limit of indebtedness, even though the claim for which it was issued was properly audited and the warrant duly issued and certified to be within the debt limit." (State v. City of Helena, 24 Mont. 521; Farbo v. School District No. 1, 95 Mont. 531; Grand Island, etc. v. Baker, 45 Pac. 494; Fritsch v. Board of Commissioners, 47 Pac. 1026; City of Chicago v. McDonald, 52 N. E. 982; 15 C. J. 575.)

3. District High School warrants are not a county but a school district obligation. Trustees of a school district maintaining a high school may legally issue warrants against that part of the high school fund appropriated for the particular purpose until the appropriation is exhausted, and this without regard to the financial condition of the county in which the school district is situate. Where money is not in the treasury to pay the warrants, but the appropriation therefor has not been exhausted, the treasurer may continue to register such warrants until such time as the appropriation to meet the same is exhausted. (Chapter 178, Laws of 1933.)

4. They cannot, but the board of county commissioners may, at their instance, be required by the district court to make a tax levy to pay such bonds as they fall due, together with the accrued interest. (Sec. 25, Chap. 188, Laws of 1931; First Nat. Bank v. Sorenson, 65 Mont. 1; 6 McQuillin on Municipal Corporations, sec. 2722, page 628.)

5. The spirit of the resolution is all right. Whether any part of it is at variance with the law may be easily determined from the answers given to questions 1, 2, 3 and 4, and the authorities cited.

It may be informative to add that while the Supreme Court in the case of State v. City of Helena, 24 Mont. 521, held that a city in the same unfortunate plight as Musselshell County finds itself in now, could without

statutory authority carry on its corporate operations on the cash or pay as you go plan, the Supreme Court in the recent case of Farbo v. School District No. 1, supra, held that a school district which had exceeded its debt limit could not conduct its business on such a plan because of want of statutory authority. That authority, however, was later given by Chapter 34, Laws of Extraordinary Session 1933-1934. The financial condition of Musselshell County and a few other counties of the state seem to call for remedial legislation of some sort.