

Opinion No. 87.

Counties—Funding Bonds—Constitution, Section 5, Article XIII—New Indebtedness—Single Purpose.

HELD: Funding bonds in excess of \$10,000 issued by a county under authority of Chapter 188, Laws of 1939, are not a debt or liability for a single purpose within the meaning of Section 5, Article XIII.

June 23, 1939.

Mr. Phil G. Greenan
County Attorney
Great Falls, Montana

Dear Mr. Greenan:

You have asked whether Chapter 188, Laws of 1939, authorizing the refunding of warrants and other indebtedness by counties is constitutional, particularly should the funding bonds exceed the sum of \$10,000, the limit of indebtedness which may be created for a single purpose without a vote of the people (Section 5, Article XIII, Montana Constitution). You state:

"It seems to me, however, that the single purpose for which this indebtedness would be created is now definitely stated in the statute, that is, Chapter 188, and the bonds are issued for the sole and single purpose of retiring registered warrants outstanding as of the date of February 28, 1939. By issuing, the bonds we are creating a new indebtedness, although the proceeds therefrom retire those already outstanding."

The two questions are, (1) are such funding bonds a new indebtedness; and (2) are they issued for a single purpose within the meaning of the Constitution.

This court has often held that the issuance of bonds to pay outstanding obligations does not create a debt.

Lodge v. Ayers et al., 108 Mont. 527;

State ex rel. Tipton v. Erickson et al. (1933), 93 Mont. 466, 475, 19 Pac. (2) 277;

State ex rel. Toomey v. Board of Education (1925), 74 Mont. 1, 238 Pac. 316, 320;

Edwards v. Lewis and Clark County, 53 Mont. 359, 165 Pac. 297;

See also,
Palmer v. City of Helena, 19 Mont. 61, 47 Pac. 209;

Hotchkiss v. Marion, 12 Mont. 218, 29 Pac. 821;

Re Application of the State to Issue Bonds to Fund Indebtedness, 33 Okla. 797, 127 Pac. 1065.

The Constitution reads:

"No county shall incur any indebtedness or liability for any single purpose to an amount exceeding \$10,000 without the approval of a majority of the electors thereof."

Since such bonds are not a new debt, it also disposes of the second question. It is not necessary to consider what is a single purpose. That question was considered and the cases reviewed in *Nelson et al. v. Jackson et al.*, 97 Mont. 299, 33 Pac. (2) 822; see also Volume 15, Opinions of the Attorney General, 59; *Id.*, 91.

In the light of the above cited authorities, it is my opinion that such bonds in excess of \$10,000 do not create a debt or liability for a single purpose and that Chapter 188, Laws of 1939, does not contravene Section 5, Article XIII of the Montana Constitution.