No. 30

INITIATIVE—REFERENDUM—MONTANA STATE COLLEGE—NORTH MONTANA COLLEGE—TAXATION—BONDS

Held: Either an initiative measure or a referendum measure may be drawn for the purpose of levying a tax and issuing bonds to erect buildings at Montana State College and North Montana College in the same bill or act, under the decision of State ex rel Bonner v. Dixon, et al., 59 Mont. 58, 195 Pac. 841, and taking into consideration the requirements set forth in Herrin v. Erickson, 90 Mont. 259, 2 Pac. (2nd) 296.

February 20, 1941.

Honorable G. F. Mundy
Senator from Hill County
State Capitol
Helena, Montana

Dear Senator Mundy:

You have submitted the following:

> "Would a referendum or initiative measure be constitutional which provides for the financing of the building and equipping of buildings for both the Montana State College and the Northern Montana College at Havre to be included in the same measure or would it require two separate measures, one for each of the said institutions?"

You will note that Article V, Section 23, Montana Constitution, forbids the enactment by the Legislature of any law which contains more than one subject. The subject shall be clearly expressed in the title. Article V, Section 23, supra, is one of the constitutional provisions that must be compiled with either a law enacted by the Legislature or a referendum or initiative measure.

However, it has been held in the case of State ex rel Bonner v. Dixon, et al., 59 Mont. 58, 195 Pac. 841, that such a mesaure is not an appropriation measure and does not conflict with Section 1, of Article V, of our Constitution. The case of State ex rel Bonner v. Dixon, supra, dealt with Initiative Measure No. 19, passed by the people at the general election held on November 2, 1920, providing for the construction, repair and equipment of buildings for the State University in Missoula, the College of Agriculture and Mechanical Arts in Bozeman, the School of Mines in Butte, the Normal College in Dillon, the Orphans' Home in Twin Bridges, the School for the Deaf and Blind in Boulder, the Industrial School in Miles City, and the Vocational School for Girls in Helena. The Court held that all the above institutions were under the control of the State Board of Education and that therefore the measure dealt with and was for one purpose under Article V, Section 23, supra.

The Court said in part as follows:

> "Chapter 101 of the Laws of 1919, establishing the State Vocational School for Girls at Helena, places it under the control and supervision of the State Board of Education, so that all of the institutions affected by the Act are under the control and supervision of the State Board of Education, and the law in question is designed to provide revenues by means of a state bond issue, for constructing, repairing and equipping necessary buildings at the several institutions named. It is clear to us that the Act does not contravene this provision of the Constitution, as such law manifestly embraces but a single purpose, viz., the issuance and sale of state bonds whereby funds may be raised and made available for buildings and betterments of certain State institutions named, under the control of the State Board of Education. In State v. Ross, 38 Mont. 319, 99 Pac. 1056, this Court, speaking through Mr. Justice Holloway, said: 'In Evers v. Hudson, 36 Mont. 135, 92 Pac. 462, this Court in considering a like objection to a statute, said, "The object of the constitutional provision now under consideration is not to embarrass honest legislation, but to prevent the vicious practice, which prevailed in states which did not have such inhibition, of joining in one Act incongruous and unrelated matters. The rule of interpretation now quite generally adopted is that, if all parts of the statute have a natural connection and can reasonably be said to relate, directly or indirectly, to one general and legitimate subject of legislation, the Act is not open to the charge that it violates this constitutional provision; and this is true no matter how extensively or minutely it deals with the details looking to the accomplishment of the main legislative purpose . . . " ' "

There were several other constitutional provisions which were urged by the opponents of said measure; but the Court, in its decision, explained all such objections away and held the measure was constitutional.

However, in the case of Herrin v. Erickson, et al., 90 Mont. 259, 2 Pac. (2nd) 296, the referendum measure which was passed as Chapter 126 of the Laws of 1929 and ratified by the people on November 4, 1930, and enacted by Chapter 186 of the Laws of 1931, was attacked on the ground that said measure dealt with more than one subject and was not for a single purpose. In that case, the same result was sought to be obtained; that is, the sale of bonds for the purpose of constructing buildings at all of the institutions above named but also including the State Prison, the Insane Asylum, the Tuberculosis Sanitarium and the Soldiers' Home as beneficiaries of the fund. These, the Court held, were wholly

disassociated institutions and therefore violated the said provision of the Constitution.

The Court also found the Act did not provide for a specific tax to mature the bonds and the indebtedness within a designated time, but shifted the responsibility of providing for appropriations to succeeding Legislative Assemblies. The Court finally held:

> "The Act before us cannot under any theory be sustained as one specifying a single purpose to which the funds shall be applied. It thus comes into conflict with Section 2, Article XIII and cannot stand.
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> "Also the Act, we think, is void for failure to levy a tax. The command of Section 2 of Article XIII is that the law creating the debt shall 'provide for the levy of a tax sufficient to pay the interest on, and extinguish the principal of such debt within the time limited by such law for the payment thereof.' . . .
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> "A tax levy is a legilsative function, and the power to make it cannot be delegated to any administrative board or officer. . . . The authority may come from the Constitution which, in exceptional cases, will provide for the levy of a specific tax, or for a tax for some defined purpose; generally, the Legislature is the only body which can levy taxes for State purposes. . . .
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> "It is essential that the people know to what extent the tax levy for State purposes, otherwise fixed and definite, shall be increased. They might be willing to approve a levy of a mill but averse to a levy of two mills, or five mills. They have a right to know the extent of their additional tax burden. . . .
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> "It is well to call to mind the fact that all prior laws of this character have specified the rate of taxation in unmistakable terms . . . "
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> Herrin v. Erickson, et al., 90 Mont. 259, 2 Pac. (2nd) 296.

Quoting again from the above case, the Court said:

> "The Act does not specify, but only indicates in a general way, the purpose to which the funds shall be applied . . .
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> "The addition of the four institutions named in Chapter 126 that were not embraced in the Act in the Bonner case deprives Chapter 126 of the requirement that it relate to a single purpose. Those four institutions are not in any sense educational institutions. Their affairs are not administered by the same officers or boards. Their purposes are wholly unrelated to the purposes of the institutions involved in the Bonner case . . . What possible relation can there be between the College of Agriculture and Mechanic Arts and the Insane Asylum?"

It will be seen, therefore, that either an initiative measure or a referendum measure may be drawn for the purpose submitted in your inquiry which would bring it within the constitutional requirements.

One measure providing for the financing of buildings and furnishings of the same at the Montana State College at Bozeman and the North Montana College at Havre, inasmuch as both institutions are under the supervision and control of the State Board of Education, would bring such a measure under the decision of State ex rel Bonner v. Dixon, et al., supra, and would be for one purpose, as in such decision determined. The bill should be drawn so as to obviate the errors pointed out in the case of Herrin v. Erickson et al., supra.

Sincerely yours,

JOHN W. BONNER
Attorney General