

Opinion No. 163.

**County Bonds—Bonds, County—
Redemption of Bonds—
Maturity of Bonds.**

Held: County bonds held by the State Montana may not be refunded prior to the maturity date of the bonds when there is no provision in the bonds for redemption prior to maturity.

May 25, 1946

Mr. Fred W. Schmitz
County Attorney
Broadwater County
Townsend, Montana

Dear Mr. Schmitz:

You have requested my opinion asking if county bonds of the series of 1934, which are held by the State of Montana, may be refunded prior to their maturity. The bonds in question have no provision for redemption prior to maturity.

The bonds under consideration were issued prior to Chapter 33, Laws of 1943, which chapter is mandatory in requiring that county bonds be redeemable five years from the date of issue. The law at the time of the issuance of the bonds contained no such mandatory provision as to redemption and Chapter 115, Laws of 1933, which was the controlling statute, provided in part:

“All bonds issued for a longer term than five years may be redeemable, at the option of the county, at

any time before maturity when so stated in the bonds."

As there was no provision for redemption prior to maturity recited, and the law did not require such a reservation for the county, there is no such right as a matter of contract.

The statutory duties of the State Board of Land Commissioners concerning the payment and redemption of bonds which it holds is found in Section 1916, Revised Codes of Montana, 1935, which provides in part:

"This section shall not be so construed, however, as to authorize or permit any school district, town, city or county to issue refunding bonds for the purpose of paying and redeeming any bond or bonds held by the state before the optional or redeemable date therein stated, nor to grant the right to pay any such bond or bonds held by the state before the optional or redeemable date from the proceeds of refunding bonds, except as provided in section 1224.7."

The above quoted precludes any county from refunding bonds held by the state prior to "the optional or redeemable date" and such prohibition would apply with equal force to refunding prior to the maturity date.

Therefore, in accordance with the above law given us by our legislature, it is my opinion that such county bonds held by the State of Montana may not be refunded prior to the maturity date of the bonds when there is no provision in the bonds for redemption prior to maturity.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General