

Opinion No. 64.
Rural Improvement District Bonds—
Term of Bonds—Board of County
Commissioners—Special
Assessments.

HELD: A Board of County Commissioners may fix the term of rural improvement district bonds at a maximum period of twenty years.

February 27, 1954.

Mr. Arnold A. Berger
 County Attorney
 Yellowstone County
 Billings, Montana

Dear Mr. Berger:

You have submitted for my opinion the following question:

"Can bonds be issued for a period of twenty years under Title 16, Chapter 16, Revised Codes of Montana, 1947, entitled 'Rural Improvement Districts'."

In answering your question, it is important to consider the method of financing a rural improvement district. Under Section 16-1611, R. C. M., 1947, the entire cost of the improvements is assessed against the entire improvement district. Thus, the amount of the warrants or bonds to be issued is fixed by the cost of the improvement. The payment of assessments to defray this cost may, under Section 16-1613, R. C. M., 1947, be spread over a term of not to exceed twenty years. Prior to the amendment of Section 16-1613 by Chapter 140, Laws of 1947, the term was ten years.

The form of the bonds or warrants issued as evidence of the indebtedness of the special improvement district is fixed in Section 16-1620, R. C. M., 1947. This section specifically states that the resolution of the Board of County Commissioners authorizing the issuance of the warrants or bonds must provide:

"... for the payment or redemption of such warrants (or bonds) at a time certain, which time of payment must not exceed ten years from and after the date of issuance."

The failure of the legislature to amend Section 16-1620, R. C. M., 1947, so that the warrants or bonds may be redeemable over a period of twenty years results in a conflict between the term of the bonds and the time for the payment of assessments to retire the bonds. If the conclusion were reached that the warrants or bonds must be paid in ten years and the source of the revenue to pay them, the assessments on the district, can be spread over a period of twenty years, then at the due date of the bonds, one-half of the funds necessary will be available with the result that some of the bonds will be in default until all the assessments have been paid. It is apparent that the legislature did not intend such a result and Section 16-1620, supra, was amended by implication.

It is true, the courts do not favor amendments of statutes by implication, and this was so held in *State v. Board of County Commissioners of Cascade County*, 89 Mont. 37, 296 Pac. 1. However, a legislative amendment cannot be ignored or nullified and it must be made effective if at all possible. In *Pilgeram v. Hass*, 118 Mont. 431, 167 Pac. (2d) 339, our court said:

"In the construction of an amendatory Act it will be presumed that the legislature, in passing it, intended to make some change in the existing law, and therefore the court should endeavor to give some effect to the amendment."

In applying this rule to the facts under consideration, if the extension of twenty years for the payment of assessments does not extend the term of the warrants or bonds, then the amendment would be ineffective and the will of the legislature defeated. Effect must be given to the amendment and this can be done only by extending the term of the warrants or bonds.

It is therefore my opinion that a Board of County Commissioners may fix the term of rural improvement district bonds at a maximum period of twenty years.