

Opinion No. 28

SCHOOLS AND SCHOOL DISTRICTS, Bonds, disposition of excess bond funds—ARTICLE XIII, Section 3, Montana Constitution—Section 75-3930, RCM, 1947—Section 75-3932, RCM, 1947

Held: Excess funds of a bond issue, after the full accomplishment of the purpose for which the bonds were sold, should be placed in the school district sinking fund and used to redeem bonds or purchase bonds of the issue.

September 30, 1959

Mr. Charles E. Marshall
County Attorney
Fergus County
Lewistown, Montana

Dear Mr. Marshall:

You have requested my opinion concerning the disposition of surplus funds realized from the sale of bonds after the accomplishment of the purpose for which the bonds were issued. You advised me that

bonds were issued by the school district in the amount of \$400,000 for the construction of a new school building and that the actual cost of the building will be \$360,000, leaving \$40,000 on hand. Section 3 of Article XIII of the Montana Constitution provides as follows:

"All moneys borrowed by or on behalf of the state or any county, city, town, municipality or other subdivision of the state, shall be used only for the purpose specified in the law authorizing the loan."

The language of this constitutional provision is clear. This fact was recognized in *State ex rel. Furnish vs. Mullendore*, 53 Mont. 109, 161 Pac. 949, where the court applied this constitutional provision in the following language:

"These funds may not be expended for any purpose other than that for which they have been provided."

From the foregoing, it must be concluded that moneys received from the sale of bonds cannot be diverted from the purpose for which the loan was made. However, the purpose of the bond issue has been accomplished for \$360,000 and to require that the \$40,000 be used for unnecessary building expenses would result in a waste of school district money and an unnecessary tax burden for the property owners in the district. Surely the constitution and the statute cannot require such an action.

There is no express law stating the disposition of surplus funds from a bond issue. Although Section 75-3932, RCM, 1947, provides that the balance of sinking funds after retirement of the bonds shall be transferred to the general fund of the school district, such a rule should not be applied to the excess bond money because bonds are to be paid over a period of twenty years and use of the money in the general fund would give tax relief for the next fiscal year only.

In the case of *Rogge vs. Petroleum County*, 107 Mont. 36, 80 Pac. 2d 380, our Supreme Court held that a Board of County Commissioners has no authority to levy taxes to raise funds to buy county bonds before they mature. The Court in this connection said:

"Such a holding would in effect change the obligation of the taxpayers who assumed the bonded indebtedness on the understanding that they would not be called upon to meet the obligations until they matured according to their terms."

The principle invoked in this case is that bonds for capital expenditures should be retired over a long period and without an increased burden in any one fiscal year. If the surplus funds from the bond issue are placed in the sinking fund and used either to redeem or purchase outstanding bonds of the issue, as permitted in Section 75-3930, RCM, 1947, there would be tax relief for many years and on an equitable basis.

It is, therefore, my opinion that excess funds of a bond issue after the full accomplishment of the purpose for which the bonds are sold, should be placed in the school district sinking fund and used to redeem bonds or purchase bonds of the issue.

Very truly yours,
FORREST H. ANDERSON
Attorney General