

Opinion No. 51

STATE BOARD OF EXAMINERS; Powers; issuance of bonds for capitol building repair—Chapter 278, Laws of 1955 (Sections 78-719 through 78-727, RCM, 1947) and Chapter 248, Laws of 1957 (Sections 78-728 through 78-736, RCM, 1947).

Held: The two year limitation imposed by Article XII, Section 12 of the Montana Constitution has no application to Chapter 278, Session Laws of 1955 and Chapter 248, Session Laws of 1957. Said Chapters are limited only by the respective amounts contained therein.

November 20, 1962

Mr. M. Wm. McEnaney, Executive Clerk
State Board of Examiners
Capitol Building
Helena, Montana

Dear Mr. McEnaney:

I am in receipt of your letter wherein you request my opinion on the following subject:

Whether the authority to issue and sell bonds under Chapter 278, Session Laws of 1955 (Sections 78-719 through 78-727; RCM, 1947) and Chapter 248, Session Laws of 1957 (Sections 78-728 through 78-736, RCM, 1947) is a continuing authority, limited only in amount as set forth therein or whether such authority is limited by Section 12, Article XII of the Montana Constitution which provides in part: "No appropriation of public moneys shall be made for a longer term than two years."

Section 1 of Chapter 278, Laws of 1955, and Section 1 of Chapter 248, Laws of 1957, in identical language provide in part: "The State Board of Examiners . . . is hereby authorized to issue and sell bonds. . ." The sections then go on to state the reasons for which these bonds may be sold.

Section 6 of Chapter 278, Laws of 1955 and Section 6 of Chapter 248, Laws of 1957, in identical language provide in part: "Said bonds shall be sold by the State Board of Examiners at such time and in such manner as the board shall deem best. . ."

Section 4 of Chapter 278, Laws of 1955 and Section 4 of Chapter 248, Laws of 1957, place a limit on the aggregate amount of the bonds.

Your question presumes that these two session laws (Chapter 278, Laws of 1955 and Chapter 248, Laws of 1957) are appropriation bills or in the nature of appropriation bills and thus limited to two years by the Constitution. Such is not the case. Section 1 of each act clearly states that this is authority to sell bonds. The case of *Pioneer Motors, Inc. v. State Highway Commission*, 118 Mont. 333, 165 P. 2d 796 (1946) held at Page 344:

"The twelfth objection is that the measure is contrary to Section 12 of Article XII of the Constitution in appropriating public money for a longer period than two years. However, this court

has repeatedly held that the provision has no application to bond and debenture measures." (Citations omitted.)

Thus the Constitutional provision of Section 12, Article XII having no application, and these two chapters being self-executing and no other prohibition as to time appearing, the Board of Examiners would be limited only by the aggregate amount of money as set by the legislature.

Further, the legislature enacted Chapter 7, Laws of 1953; Chapter 2, Laws of 1955; Chapter 278, Laws of 1955 and Chapter 248, Laws of 1957, all of which are nearly identical in authorizing funds for renovation, reconstruction and repair of the state capitol building. The only respect in which the laws differ is the total aggregate amount for which the bonds are to be sold. The two acts of 1955 differ in that Chapter 2 seems to provide for general repair and Chapter 278, also provides for general repair, but places special emphasis on installing roll call voting machines. (See *State ex rel Morgan v. State Board of Examiners*, 131 Mont. 188, 309 P. 2d 336 (1957).)

With this additional consideration, it is my opinion that the most logical conclusion is not that these acts were to be considered as appropriation bills (the term appropriation being used in a generic sense therein) and thus limited to two years of existence by application of the Article XII, Section 12 prohibition of the Montana Constitution. Rather these acts limit the Board of Examiners in the amount which may be expended. When said amount is reached or so nearly reached as to render the act ineffectual, then of necessity new legislation is imperative. The manner of enacting replacement legislation of course is not for my office to determine. The period of time over which this money may be spent is vested in the discretion of the Board of Examiners and the exercise of such discretion would depend upon the need for repairs.

Very truly yours,
FORREST H. ANDERSON
Attorney General