

Opinion No. 23

BONDS; Attorneys and fiscal agents may not be employed—SECTIONS 16-2032, 16-1906, 11-2315, 11-1408, and 75-3918, REVISED CODES OF MONTANA, 1947.

HELD: A county is prohibited by law from employing an attorney or fiscal agent for assistance in bond proceedings or in the sale of general obligation bonds.

October 22, 1963

Mr. Albert E. Leuthold
State Examiner
State Capitol
Helena, Montana

Dear Mr. Leuthold:

You requested my opinion as to whether a county may employ and reimburse a fiscal agent to assist in the sale of general obligation bonds of a county. You state that one of the cities in Montana entered into a contract with a fiscal agent who handled the sale of general obligation bonds of the city.

The Montana legislature has used very specific language in disposing of the question you asked.

Section 16-2032, Revised Codes of Montana, 1947, which is one of the statutes defining and controlling the manner of sale of county general obligation bonds, provides in part as follows:

“No attorney fees, brokerage or other fees, or commission of any kind shall be paid to any person or corporation for assisting in the proceedings, or in the preparation of the bonds, or in negotiating the sale thereof.”

This language is very conclusive in prohibiting payment of any fees to a fiscal agent assisting in the sale of county general obligation bonds. The rule of construction which would apply to the above quoted statute is well expressed in *United Missouri River Power Company v. Wisconsin Bridge and Iron Company*, 44 Mont., 343, 119, Pac. 796, where our court said:

“We think the law in question is plain, certain and unambiguous. Such a statute requires no interpretation beyond the bare reading of the words of the law-making body.”

If we were to assume that a county may expend money for a fiscal agent, in most instances there would not be provision in the county budget for such an expenditure. Section 16-1906 provides in part as follows:

“Expenditures made, liabilities incurred, or warrants issued, in excess of any of the budget detailed appropriations as originally determined, or as thereafter revised by transfer, as herein provided, shall not be a liability of the county, but the official making or incurring of such expenditure or issuing of such warrant shall be liable therefor personally and upon his official bond.”

From this it would appear that the members of the Board of County Commissioners might be personally liable for such a contract.

A city government in Montana is also prohibited from employing a fiscal agent for the sale of general obligation bonds. As Section 11-2315, Revised Codes of Montana, 1947 states:

“No attorneys fees, brokerage or other fees or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings, or in the preparation of the bonds, or in negotiating the sale thereof.”

The violation of this restriction might also result in personal liability of city officers as Section 11-1408 Revised Codes of Montana, 1947, contains the following:

“Expenditures made, liabilities incurred, or warrants issued in excess of any of the budget detailed appropriations as originally determined, or as thereafter revised by transfer, and herein provided, shall not be a liability of the municipality, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond.”

The Montana legislature has restricted the board of trustees of school districts from employing anyone to assist in bond proceedings or in the sale of bonds as is stated in Section 75-3918, Revised Codes of Montana, 1947, in the identical language quoted above from Sections 16-2032 and 11-2315, Revised Codes of Montana, 1947.

It must be concluded that our law contemplates that general obligation bonds be sold by our local governing bodies without outside assistance or employment of additional experts. In other words, county attorneys, city attorneys, and other regular officers and employees of counties, cities, and school districts, must handle the bond proceedings.

It is therefore my opinion that a county is prohibited by law

from employing an attorney or fiscal agent for assistance in bond proceedings or in the sale of general obligation bonds.

Very truly yours,

FORREST H. ANDERSON
Attorney General