

## Opinion No. 12-933

August 11, 1912

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Causey Foster Company, Denver, Colo.

### **CERTIFICATES OF INDEBTEDNESS.**

Discussion of possible objection to certificates of indebtedness authorized by general appropriation bill of June 14, 1912.

### **OPINION**

{\*77} Mr. J. M. Hawkins has requested me to write you on the subject of the validity of the certificates of indebtedness which were authorized by Section 24 of the general appropriation bill passed at the {\*78} first session of the First State Legislature, which became a law June 14, 1912.

There is but one possible objection to these certificates and that can be based only upon one sentence in Section 16 of Article IV of the State Constitution, which reads as follows:

"General appropriation bills shall embrace nothing but appropriations for the expense of the executive, legislative and judiciary departments, interest, sinking fund, payments on the public debt, public schools, and other expenses required by existing laws; but if any such bill contain any other matter, only so much thereof as is hereby forbidden to be placed therein shall be void. All other appropriations shall be made by separate bills."

I have not been distinctly informed, but it has been intimated to me that objection has been made to these certificates on the ground that this language of the constitution forbids any provision in the general appropriation bill for the issue of the certificates, and that the constitution means that there shall be inserted in such a bill absolutely nothing except appropriations. I do not believe that this is what the constitution means. I think that it was intended merely to forbid the making of any appropriation in a general appropriation bill except those appropriations which are specified in the language above quoted, and this view is strengthened by a consideration of the last few words of the section which provide that "All other appropriations shall be made by separate bills." In other words, the general appropriation bill must be limited to the ordinary expenses of the government, including payments on the public debt, and in addition expenses of the public schools, and other expenses required by existing laws. Any new and special or different appropriation must be made the subject of a separate bill.

Any different view from this would be productive of great difficulty and confusion. There are few appropriation bills in which there will not be found a great variety of provisions

beyond the mere making of the appropriation of money. Frequently the making of the appropriation is accompanied by specific directions as to how it shall be expended, or there are set up limitations upon the power of officers as to matters of administration in connection with the appropriations. For instance, in this particular appropriation bill in Section 1 an appropriation is made for the payment of interest on the bonded debt which is accompanied with a proviso which is, in substance, that if at any time the money on hand is insufficient to meet interest coupons as they mature, it is the duty of the state treasurer to borrow temporarily a sufficient sum to make such payments. In Section 2 after making appropriations for the support and maintenance of educational institutions there follow some restrictions as to the pupils to be admitted to some of those institutions, a direction to the boards of others to fix the requirements for admission, and authority to conduct preparatory schools at two of those institutions. In addition to this there is a special provision as to the boards of normal schools paying from their regular appropriations a part of the traveling expenses of persons who enroll as students. In Section 5, after making an appropriation for the salary of the clerk of the {\*79} Supreme Court, who had under the territorial government been paid in part by fees, it is provided that all fees collected by the clerk since the state court was organized, must be paid into the state treasury and covered into the salary fund; and there is also a proviso as to the keeping of itemized accounts of all moneys disbursed from appropriations for contingent expenses. In the next section, which appropriates money to pay the salary of district judges, there is an addition in the form of a proviso that such judges shall be paid their actual and necessary traveling expenses, etc., when absent from their district headquarters upon official business, such expenses to be paid out of the court fund of the county for which business is transacted. These instances of such provisions might be greatly increased by a detailed examination of the whole act, and yet it would be unreasonable so to construe the constitution as to say that all these expressions of the legislative will are void, because they are not mere direct appropriations of money. The objection to these certificates of indebtedness is based upon such a construction, and the results would be so absurd as to be convincing that the objection is not well founded.

Examination of Section 24 of the act, which is the one providing for the certificates of indebtedness, will show that they are to be issued for the purpose of providing funds with which to pay appropriations made in Sections 22 and 23 of the act, which are, in substance, deficiency appropriations. There had been no session of the territorial legislature since 1909 at which time appropriations were made for the sixty-first and sixty-second fiscal years of the territory, and it was provided that these appropriations should continue for later fiscal years, if no new ones were made. The territorial fiscal year began on the first day of December in each year. Our state government was organized in January, 1912, so that a territorial fiscal year had begun, which would be the sixty-third fiscal year. The appropriations referred to were in part to cover the deficiencies caused by the increased expense incident to the state government instead of a territorial government, as well as some deficiencies in preceding fiscal years, together with three large appropriations to enable educational institutions to provide new buildings for which the revenues under the old appropriation bill of 1909 were insufficient. In view of the fact of an existing deficit in the state treasury so that these

appropriations could not be paid, it was necessary to provide some method of raising the funds with which to pay them, and this was a subject so closely connected with the making of the appropriations themselves as to make it perfectly proper that simultaneously with the appropriations a method should be provided for paying the appropriations.

There is but little in the way of authority which can be cited on this subject, and as far as I have seen there is but one case which comes close to the question here involved, or rather there are two cases reported in the same volume, one immediately following the other. At first glance they would seem to be adverse to my opinion, but I desire to say that they are not so stated as to command great respect, and the constitutional language considered is somewhat different from ours. These two cases are to be found in 14 Fla. at pages 284 and 286, and they were decided in 1872. It appears {\*80} that the language of the constitution there was, "Laws making appropriations for the salaries of public officers and other current expenses of the state, shall contain provisions on no other subject." The Governor of the State called on the Supreme Court for an opinion as to whether a section declaring certain warrants and treasurer's certificates receivable for state dues was valid, and the court very briefly said that the effect of the clause of the constitution was to render everything in a law making appropriations, unconstitutional which proposes to do anything other than make appropriations. It is to be noted that the constitutional language is so different from ours that the decision is not directly applicable, and the provision considered was not one connected with the making of the appropriations or that provided funds for their payment.

The other case was in response to a similar request from the Governor as to the validity of the 24th section of "An act for the assessment and collection of revenue in this state." This 24th section contained directions to the state treasurer as to how he should pay out moneys received from the different collectors, and the court held against the validity of the section, because it was not matter properly connected with the subject expressed in the title, the constitution providing that each law should embrace but one subject, which subject should be briefly expressed in the title. The court, however, refers to the other constitutional clause considered in the previous case about appropriation bills, and intimates that the uniting of a law making appropriations with any other subject would be violative of the constitutional provision, but the decision is put upon the other ground already referred to.

A careful examination of these two opinions will lead to the conclusion that they are not entitled to great respect, even if they were exactly applicable to our present case.

There is a case in Pennsylvania, however, which is quite persuasive in favor of the opinion herein given. The constitutional language there provided that "The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the commonwealth." The general appropriation act of 1893 contained an item for the payment of the salary of clerks in the offices of the prothonotaries of the supreme court, there having been theretofore no such clerk provided. The lower court held that while the legislature could legally create

the office of clerk to the prothonotary of the supreme court and provide for his compensation, yet this would have to be by a separate act on account of the constitutional prohibition as to appropriation bills. The supreme court of the state reversed this decision and held that although the item might be considered as creating an additional office, yet it was no violation of the constitution to insert it in the general appropriation bill. This case is reported in 161 Pa. at pages 582 to 588.

There are numerous decisions of the courts upon another constitutional provision which appears in many state constitutions, and which is contained in the first part of the same section of our constitution, in which is the clause we have been discussing, and that is as to the subject of every bill being clearly expressed in its title. These decisions, however, are of but little assistance in the present {81} discussion, but it will be found that the general current of authority is that any matter which is germane to the subject expressed in the title and naturally relates to it, is valid, and not violative of this constitutional rule. As far as they go these decisions are in harmony with what is here contended for.

It may be well further to call attention to the specific constitutional provision which authorizes the debt evidenced by these certificates of indebtedness, which is to be found in Section 7 of Article IV of the constitution, where it is stated that "The state may borrow money not exceeding the sum of two hundred thousand dollars in the aggregate to meet casual deficits or failure in revenue, or for necessary expenses." As hereinbefore shown the indebtedness now incurred is for the purpose of meeting deficits in the revenue.