

Opinion No. 12-941

August 31, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Messrs. Dillon, Thomson & Clay, Western Union Building, New York.

CERTIFICATES OF INDEBTEDNESS.

Interpretation of act of 1912 authorizing issuance of certificates of indebtedness.

OPINION

{*96} Mr. Kelly has brought to me your letter on the subject of the state certificates of indebtedness, and as soon as I can confer with the state treasurer, who has been absent but is expected here within two or three days, I will try to arrange to get the questions which you raise, submitted to the Supreme Court, as you suggest.

I have not sufficient time to write at length, but desire to call your attention to some considerations which your letter seems to indicate have not been presented to your mind.

You suggest a doubt as to whether the casual deficits, failure in revenue and necessary expenses, for which the state is authorized to borrow money, have reference to the deficits, failure in revenue and expenses of the state or of the territory. It has been my view that they refer to both the state and territory. Otherwise, with no session of the territorial legislature since 1909 and the consequent impossibility of having legislation to meet exigencies which could not have been foreseen and which were not provided for by legislation of more than three years ago, we might be left helpless as to meeting the deficits, failure in revenue and and necessary expenses during those three years, and it is obvious that upon the organization of the state government our expenses were immediately and necessarily increased, while our state revenue during the remainder of the fiscal year would be only such as could be derived from taxes levied last year under the territorial government and in pursuance of the earlier territorial legislation. No one can imagine for a moment that the state is not to be held responsible for the indebtedness of the territory incurred at any time prior to the change of government, and this appears provided for by Sections 4 and 12 of Article XXII of the Constitution.

You next present the question as to whether the items to pay which the proceeds of the certificates are to be used are casual deficits, failure in revenue or other expenses, and subdivide that in four paragraphs, of which the second, third and fourth may be considered together.

The first of these subdivisions is as to the salary of judges up to the end of the present fiscal year from the organization of the state government in January, as to which you

say the question is whether "as these expenses are not yet wholly incurred they are of such a nature as can be provided by borrowing money pursuant to Section 7 of Article 9 of the Constitution." The Constitution in said section does not indicate that the borrowed money must be used for past necessary expenses, and I submit that even with the limited {*97} meaning which you suggest, these expenses are wholly and fully incurred as they are required by the constitution itself which fixes the number of judges and the amount of their salaries. For the justices of the supreme court the full amount of their salaries for the remainder of the fiscal year was required, while for the district judges only a portion because there was a territorial continuing appropriation for salaries of district judges, which was insufficient to pay the judges under the state government. But these expenses were definitely fixed by the constitution, and there was no money available to pay them. The constitution must be construed as authorizing the state not only to borrow money to pay up past necessary expenses but to meet coming necessary expenses for which no provision under existing circumstances is possible.

The three other items are for the construction of buildings for use at state educational institutions which were created years ago by the territorial legislature and which have been recognized and adopted as state institutions by Section 11 of Article XII of the Constitution. The establishment and creation of these institutions made necessary expenses for their support, continuance and growth. They have been supported by appropriations made biennially for many years. Increased property of all kinds has been necessary to keep pace with the growing demands of the territory, now state, and the additional buildings provided for in this bill were, in the judgment of the legislature, necessary for these institutions and the legislative judgment on this point must be taken as conclusive. The same principle should apply as the one upon which have been based decisions of the courts, including the Supreme Court of the United States, as to the constitutional provision that a legislature shall not pass any local or special law where a general law can be made applicable. It has been generally held that this is a legislative, and not a judicial, question. As to whether the construction of these buildings is a necessary expense or is an expense "required by existing laws," is for the legislature alone to decide. It does not appear to me that you have considered these matters from this point of view. It seems to me inconceivable that any court should be allowed to pass upon the question as to whether the buildings provided for are necessary expenses or are expenses required by existing laws. The legislature is the representative of the sovereign authority, and is only limited by that which is to be found in the constitution, and it alone must be the judge of what is necessary for the growth, development and maintenance of these educational institutions under the laws by which they were created.