

Opinion No. 16-1797

May 13, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. H. A. Hicks, Liquidating Agent, Equitable Building, Denver, Colorado.

Certain Union County bonds are debts of the state.

OPINION

{*363} Yesterday I received your letter of the 11th instant relative to certain Union County bonds, but I could not answer until today as I wanted to get some information about the bonds. You say that the Rocky Mountain National Bank, of Central City, Colorado, which {*364} is now in process of liquidation, holds bonds, to the amount of \$ 3,500.00, issued by Union County on March 1, 1900, due March 1, 1930, and optional after March 1, 1920, and that you have been advised by the Treasurer of Union County that he has on hand in the sinking fund for the redemption of these bonds, funds in excess of \$ 10,000.00, and that he gives as an excuse for not paying these bonds off that the numbers preceding those you hold are not first presented for payment.

I think it would be good business management for the county to take up these bonds and stop the running of interest, but there is some reason in the position of the Treasurer. There might be some question about his authority to take up and pay off any of these bonds prior to the optional date, and some action by the county, under the authority given by the option, but that is not, I think, important. These bonds were issued under the provisions of Sections 13 to 21 of Chapter 58 of the Session Laws of 1899, and in Section 15 it is provided that they shall be redeemable at the option of the county after twenty years from the date of their issuance, "according to the priority and the number thereof." Probably the Treasurer founds his refusal upon that provision. In Sections 20 and 21 are to be found provisions making it the duty of the Treasurer to redeem portions of the bonds then outstanding, but those bonds to be so redeemed must be determined by lot.

I can see no difficulty, however, in your disposing of the bonds in the open market, as they are not only bonds of a perfectly solvent county, but they are also, by constitutional provision, made debts of the state. Section 1 of Article IX of the Constitution declares that the state assumes the debts and liabilities of the Territory of New Mexico, and the debts of the counties thereof which were valid and subsisting on June 20, 1910, and pledges its faith and credit for the payment thereof. There is a further requirement that the legislature shall, at its first session, provide for the payment or refunding of these debts by the issue and sale of bonds, or otherwise. In pursuance of that requirement there was elaborate legislation on the subject, which will be found in Chapter 16 of the Laws of 1912, and provision was made for the issuance of a series of bonds for the payment or refunding of the debts of the several counties. All persons having claim

against any of the counties were authorized to submit the same to a board of loan commissioners, and upon approval of their claims, the bonds could be issued, but it was provided that these bonds would mature in forty years after their date, and were optionally payable after twenty years from their date. You can readily see that it was not at all likely that any advantage would be gained by an attempt to refund a four per cent county bond, as until quite recently we could not sell bonds bearing so low a rate of interest, and it would be a positive injury to the county, as the Constitution also provides, in effect, that every county must bear its proportionate share of the burden of taxation to provide for the payment of bonds so issued, and in the legislation of 1912 there is definite provision for the levying of taxes in the several counties for the payment of interest on any bonds issued to take up bonds of the counties. I speak of this to account for the fact {*365} that the bonds, which you hold, have not been changed to the form of state bonds, but they are debts and liabilities of the state, for which, by the Constitution, the faith and credit of the state have been pledged.

I have ascertained from the records in the offices of our Traveling Auditor, of the Board of Loan Commissioners, and of the State Tax Commission, that the total bonded indebtedness of Union County is \$ 51,500.00, while the assessed valuation was about eleven millions of dollars in 1915. I cannot give you the exact figures of the valuation, as the office of the Tax Commission is closed today. This may not be important, however, as the debt has become a debt of the state. I cannot here say anything definite about the manner in which the bonds were issued, but I have no doubt that before they were sold in 1900, the bond buyers thoroughly satisfied themselves as to the regularity of all the proceedings leading up to their issue.

It seems to me that what I have written gives all that you asked for in a letter from me, and I agree with you that it ought to be sufficient to enable you to dispose of them in the market at as good a price as any four per cent bonds will command.