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VOLUME NO. 45

OPINION NO. 8

BONDS - When obligation on school bonds attaches;
PUBLIC FUNDS - School bonds binding on date of delivery;
SCHOOL DISTRICTS - School bonds binding on date of delivery;
MONTANA CODE ANNOTATED - Sections 20-6-411, 20-9-401 to -471,
20-9-411.

HELD: School bonds become binding upon taxpayers on the date
bonds are delivered.

June 21, 1993

Mr. Blair Jones
Stillwater County Attorney
P.O. Box 179
Columbus, MT 59019-0179

Dear Mr. Jones:

You have asked my opinion on a number of questions concerning school districts. Your first two questions concern a geographic area designated as 55-6 which historically has been part of both Columbus Elementary School District 6 and Reed Point High School District 9-9. Some residents of 55-6 have asserted that their property was transferred out of Reed Point High School District 9-9 to Columbus High School District 6 under an order from a former Stillwater County Superintendent of Schools dated December 22, 1961. You have asked whether the area known as 55-6 should have been transferred in 1961 and, if so, whether the order could be lawfully enforced today. You have attached numerous exhibits to aid in interpreting the order.

The proper interpretation of the order and attached exhibits involves numerous factual determinations which are not appropriate for an Attorney General's Opinion, since my statutory authority is limited solely to questions of law. MCA § 2-15-501(6). I must therefore decline to answer your first two questions.

You have also asked:

At what time do taxpayers who own real property within a school district incur the obligations attendant with the issuance of bonds for financing the construction of school facilities?

The procedures that must be followed for a school district to incur bonded indebtedness are set forth in MCA §§ 20-9-401 to -471 and, generally, are initiated when the school district's board of trustees adopts a resolution calling for an election among qualified electors in the district upon proper ballot preparation and notice. MCA §§ 20-9-421, -422. If the canvass of votes indicates approval of the school bond proposition, the district board of trustees issues a certificate proclaiming passage of the bond proposition. MCA § 20-9-428(2). The trustees must, within 60 days, adopt a resolution providing for the issuance of the bonds and give notice of the bond sale. MCA §§ 20-9-429, -430. The trustees then meet to consider bids on the bond sale and must accept the bid they believe to be most advantageous to the district, MCA § 20-9-432, and the bonds are then printed and executed, MCA § 20-9-433. Once the bonds are registered by the county treasurer, they are delivered to the purchaser when full payment is received. MCA § 20-9-435.

It has long been held that "[t]he act of delivery is essential to the existence of any deed, bond or note. Although drawn and signed, so long as it is undelivered it is a nullity; not only does it take effect only *by* delivery, but also only *on* delivery." Young v. Clarendon Township, 132 U.S. 340, 353 (1889) (emphasis in original). Thus, the general rule is that "[a] bond does not become binding until delivery." McQuillin, Municipal Corporations § 43.50; see also 64 Am. Jur. 2d Public Securities and Obligations § 213 (the act of delivery is essential to the very existence of public bonds as obligations binding on their issuers). This general rule is supported by the well-grounded rationale that an obligation is binding once payment is actually made; in the context of bonds, payment occurs upon delivery. MCA § 20-9-435; Mistler v. Eye, 231 P. 1045, 1047 (Okla. 1925) ("There is no indebtedness until the money is received by the district. The money is not received until the bonds are issued, approved as required by law, and delivered to the purchasers").

It has been suggested that in the context of a transfer of property out of a school district the obligation arises upon the date of "issuance" of the bonds, which is not necessarily the same as the date of delivery. This suggestion is based upon the language of MCA § 20-6-411 which provides that the existing bonded indebtedness of a transferred territory remains with the "original territory against which such bonds were issued." This phrase in MCA § 20-6-411, however, does not describe when the obligation attaches to

the transferred property, but rather describes generally the property to which the obligation attaches.

It is further suggested that because the date of issuance of the bonds may be different from the date of delivery, the obligation arises on the date of issuance rather than delivery. MCA § 20-9-411 does provide for backdating bonds in order to have payment of interest on the bonds coincide with the largest monthly tax collections. Nonetheless, this section also provides:

[N]o interest shall be charged on these bonds before they have been delivered to the purchaser and payment has been made by the purchaser. Interest accrued on such bonds according to their terms at the time of delivery shall either be refunded by the purchaser or deducted from the first interest payments.

MCA § 20-9-411. This language clearly indicates that it is the date of delivery that triggers the date of obligation, because the date of delivery also triggers calculation of the interest.

Further, even if the date of issuance were relevant to your inquiry, that concept has dual meaning in the context of bonded indebtedness. As McQuillin states, "[t]he word 'issue,' as applied to bonds, generally includes delivery, but it does not invariably do so." 15 McQuillin, Municipal Corporations § 43.48, at 690. In Whetstone v. City of Stuttgart, 193 Ark. 88, 97 S.W.2d 641 (1936), the Arkansas Supreme Court described the dual meaning of the word "issue":

In financial parlance the term "issue" seems to have two phases of meaning. "Date of issue," when applied to notes, bonds, etc., of a series, usually means the arbitrary date fixed as the beginning of the term for which they run, without reference to the precise time when convenience or the state of the market may permit of their sale or delivery[.]

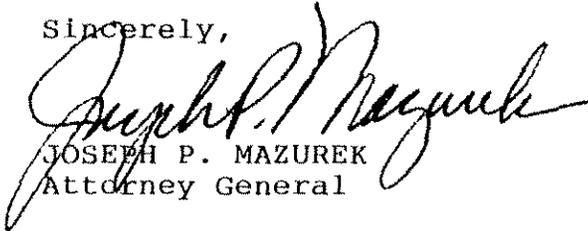
The "date of issue" in MCA § 20-9-411 is a date fixed for convenience in order to simplify tax collections. In MCA § 20-6-411 the indebtedness of an original territory "against which the bonds were issued" refers to the entire bond procedure including the time at which the obligation occurred. See Baker v. Unified Sch. Dist. No. 346, 206 Kan. 581, 480 P.2d 409, 413 (1971) (municipal bonds are not issued until they are sent out, delivered or put into circulation). Thus, the date of issuance does not trigger the date of obligation; rather, the obligation arises, as provided in the general rule, when the bonds are delivered.

45 Op. Att'y Gen. No. 8
Page 4
June 21, 1993

THEREFORE, IT IS MY OPINION:

School bonds become binding upon taxpayers on the date bonds are delivered.

Sincerely,



Handwritten signature of Joseph P. Mazurek in cursive script.

JOSEPH P. MAZUREK
Attorney General

jpm/elg/dlh