Opinion No. 12-935

August 15, 1912

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TO: Mr. W. G. Kelly, Santa Fe, N. M.

CERTIFICATES OF INDEBTEDNESS.

Discussion of certificates of indebtedness authorized by Sec. 24 of general appropriation bill of June 14, 1912.

OPINION

*{*84}* Referring to the matter of objections to the validity of the certificates of indebtedness of the State of New Mexico which were authorized by Section 24 of the general appropriation bill passed at the first session of the state legislature, which became a law June 14, 1912, in compliance with your request I will as briefly as possible state my views as to the proper construction of the law and the constitution.

As far as I can discover there is but one objection which can be made to these certificates and that must be based upon what is to be found in Section 16 of Article IV of the State Constitution. I will quote the whole of that section although the second sentence is the one directly referred to general appropriation bills:

"The subject of every bill shall be clearly expressed in its title, and no bill embracing more than one subject shall be passed except general appropriation bills and bills for the codification and revision of the laws; but if any subject is embraced in any act which is not expressed in its title, only so much of the act as is not so expressed shall be void. 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; and 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."

No one has directly stated to me that the certificates referred to may be considered invalid because they are authorized by a separate section in the general appropriation bill, but I have been told that somebody somewhere has taken that position. In other words, the objection is that nothing can be put in a general appropriation *{*85}* bill except direct appropriations of money, and any clause or provision other than a mere appropriation would be void. This is a natural conclusion for a literal-minded person who looks at nothing except the letter of the law without stopping to consider its spirit and intent. The constitutional prohibition must have had some definite purpose, and we should first consider what that purpose was.

The primary object of the constitution-makers was undoubtedly to protect the state treasury against legislative raids by the insertion of special appropriations for new purposes in a general appropriation bill where they might pass unnoticed, but if considered separately would be carefully scrutinized and considered on their merits. A secondary object must have been to prevent the engrafting on such an appropriation bill legislation in no way related to making provision for the expenses of the government, but this second purpose is not material to the present question.

When the constitution says that "General appropriation bills shall embrace nothing but appropriations" for certain specific purposes, it should be taken as meaning that no appropriations other than those specified would be valid in such a general bill, and this view is strengthened by the short sentence at the end of the section which says that "All other appropriations shall be made by separate bills." This emphasizes the intention of the previous prohibition. Any different view from this would be productive of so much difficulty and confusion that we ought not to believe that the intention was so to hamper the legislature that in such a bill there should be nothing except statements that so much money is appropriated for specific objects. It would be impossible for the legislature to accompany the making of an appropriation with any direction as to how it should be expended or any statement as to where the money should come from with which to pay it. There are probably very few general appropriation bills to be found on the statute books of the different states which do not contain matter of this kind, the validity of which does not appear to have been challenged, although a number of states have constitutional provisions similar to the one here under consideration.

This particular appropriation bill is probably a fair sample in this particular. For instance, in the first section there is an appropriation of a specific sum of money for the payment of interest on the bonded debt, accompanied by a clause making it the duty of the state treasurer whenever the money on hand is insufficient to meet maturing coupons, to borrow temporarily a sufficient sum to make such payments, and authorizing him to negotiate the necessary loan at a rate not exceeding six per cent per annum, and directing the state auditor to countersign any necessary papers for the negotiation of such loan. This part of the section also provides for the use of any surplus from any other fund to pay such deficit before negotiating the loan.

The second section of the bill makes appropriations for the support and maintenance of the state educational institutions, nine in number, and then sets out a prohibition as to the admission of pupils under twelve years of age to the two normal schools; a direction to the managing boards of four of the institutions to fix the standard requirements of admission of students, and authority to *{*86}* the two normal institutions to conduct preparatory schools. After this the normal institutions are directed each to set aside a specific sum of money from the regular appropriation to pay railroad fares for a part of their students, provided that the students are bona fide residents of the state and attend continuously for not less than eight weeks, and file a declaration of intention to teach in the State of New Mexico.

In Section 5, after a specific appropriation for the salary and contingent expenses of the clerk of the supreme court, there is a provision that all fees collected by the clerk since the state supreme court was organized shall be paid to the state treasurer, and by him covered into the salary fund.

In Section 6 there is an appropriation to pay the salary of district judges, followed by a proviso to the effect that such judges shall be reimbursed actual and necessary traveling expenses, hotel bills, and other necessary expenses when absent from their district headquarters upon official business, such expenses to be paid out of the court fund of the county for which such business is transacted.

In Section 12 are appropriations for the salary and expenses of the adjutant general and for other expenses connected with the state militia, and in addition a paragraph making it the duty of the auditor to make transfers upon a certificate by the adjutant general of any surplus in any of the funds created for the support and maintenance of the National Guard to any fund in which a deficiency exists.

In Section 13 there are appropriations for the support and maintenance of the mounted police, following which is legislation as to the numbers and ranks of the members of that force, and a statement that the force shall be stationed at Santa Fe or other points in the state, to be designated by the Governor, and to be at all times under his direction, and with further authority to the Governor to appoint additional members temporarily whenever in his judgment he deems it necessary.

In Section 14 money is appropriated for the expenses of sheriffs in conveying prisoners to the penitentiary, with further legislation as to what those sheriffs shall be entitled to receive, and requiring that they obtain from the district judge of their respective counties certificates specifying the number of guards necessary to the safe conveyance of prisoners.

Other similar instances could be specified, but the foregoing ought to be sufficient. In every instance of this kind matters referred to would be held utterly void if the objection suggested to the validity of the certificates of indebtedness is to be upheld, and yet such provisions are natural and necessary things to accompany the making of appropriations. Nothing could be more absurd than to require that there should be separate acts for each one of these special and necessary provisions as to the various appropriations, and we would have the statute book encumbered with a great variety of little acts, each referring to some item of appropriation in the general appropriation bill.

The provision in Section 24 of the act for the issuance of the certificates of indebtedness in order to provide funds with which to pay appropriations made in Sections 22 and 23, is just as naturally related to those appropriations as any other matters hereinbefore *{*87}* considered. The appropriations are deficiency appropriations, and the certificates are issued for the purpose of meeting a deficit in the revenues in accordance with the authority given in Section 7 of Article IX of the Constitution, which is to the effect "That

the state may borrow money not to exceed the sum of two hundred thousand dollars in the aggregate to meet casual deficits or failure in revenue, or for necessary expenses."

The last session of the territorial legislature was in 1909 at which time appropriations were made for the sixty-first and sixty-second fiscal years of the territory, with a provision that such appropriations should continue for later fiscal years if new appropriations were not made. Regularly there should have been a session of the legislature in 1911, but congress provided in the enabling act that there should be no such session. The territorial fiscal years began on the first day of December, and as the state government was organized in January, 1912, a territorial fiscal year had begun, which would be the sixty-third fiscal year. The appropriations referred to were in part to cover deficiencies caused by the increased expense incident to the state government which took the place of the territorial government, and in part to cover deficiencies in preceding fiscal years, together with others to cover the necessary expense of new buildings for educational institutions for which the revenues and appropriations under the appropriation bill of 1909 were insufficient. It was impossible to pay these appropriations without raising funds in the manner provided for in said Section 24, and this was a subject so closely connected with the appropriations as to make it perfectly proper that simultaneously with their making a method should be provided for meeting them.

There seems to be very little in the way of authority which can be cited on this subject, and I will content myself with merely calling attention to 14 Fla., pages 284 and 286, and to 161 Pa., pages 582 to 588. If there are other decisions as nearly applicable I have not found them. I must say that the Florida opinion does not appear of such a character as to command great respect, is based upon different constitutional language, and can hardly be considered as direct authority. The Pennsylvania case is upon a constitutional provision more like ours, and so far as it can be considered applicable is quite persuasive in favor of the views herein set forth.

There are numerous decisions of courts upon that constitutional provision which is contained in the first part of Section 16 of Article IV of our Constitution, that being the one requiring the subject of every bill to be clearly expressed in its title, substantially the same provision appearing in a great many other state constitutions. While they are of but little assistance in the present discussion, it will be found that the general current of authority is that any matter germane to the subject expressed in a bill and naturally relating to it, is valid. As far as they go these decisions harmonize with my contention.