

INTERPRETATION OF THE CAPITOL GROUNDS EXTENSION LAW.

The Iowa Supreme Court on December 15, 1913, unanimously concurring in an opinion by Hon. Scott M. Ladd, one of its members, sustained in all its essential parts Chapter 14, Acts of the 35th General Assembly. The opinion follows:

Appeal from District Court, Polk County, J. H. Applegate, Judge.

Action by citizens of Van Buren and Wapello Counties to enjoin the executive council of the state from purchasing certain real estate and from issuing interest-bearing certificates in payment thereof as authorized by chapter 14 of the Acts of the Thirty-Fifth General Assembly. Decree was entered enjoining the issuance of certificates in payment of said property; otherwise the relief prayed was denied. Both parties appeal, that of defendants being first perfected. Reversed.

LADD, J. The executive council of the state consists of the Governor, Secretary of State, Treasurer of State, and the Auditor of State. It employs a secretary. The object of this action is to enjoin the executive council as such and each member thereof from acquiring for the state the property described in and issuing the certificates authorized by chapter 14 of the Acts of the Thirty-Fifth General Assembly, for that, as is contended, the provisions thereof are in violation of sections 2 and 5 of the seventh article of the Constitution of the state. Section 2 of the act in question authorizes and directs the executive council, for the purpose of extending the capitol grounds, to "purchase from time to time within said period of ten years any or all of the real estate not already owned by the state" appearing on the annexed plat.

Lots 1 to 6, inclusive, in block 5, four lots in block 4, and five lots in block 7 belong to the state as, of course, does the tract on which the capitol building is located. The purchase directed is of all other lots in the plat. With streets vacated there are over 50 acres in all and, if laid out and improved, as required, in accordance with the Allison Memorial Commission plan on file in the office of the Secretary of State made a part of the act by section 3, the grounds undoubtedly would be artistic and of great beauty. For the purpose of acquiring the land necessary and improving the grounds, section 1 of the act provides that "there shall be levied annually for a period of ten (10) years, commencing with the first

levy made after the passage of this act, a special tax as follows; in each of the years 1913 and 1914, one-half mill on the dollar of the taxable property in the state, and in each of the remaining eight years such rate of levy to be fixed by the executive council as will yield approximately one hundred and fifty thousand dollars (\$150,000) annually. The proceeds of such levies shall be carried into the state treasury to the credit of a fund to be called the capitol grounds extension and improvement fund. The amount so realized by said levies shall be in lieu of all of the appropriations for said purposes during the said period of ten years." Section 4 authorizes the executive council to acquire any or all of said real estate for the state and in so doing purchase same "on option, contracts or in any other way which said council may deem expedient, * * * at any time within said period of ten years at its discretion and as the amount of money in said fund at any time may enable them to do. Payment for said real estate may be made by said executive council certifying to the State Auditor the amount due to any person at any time and the auditor then drawing a warrant in his favor on the State Treasurer out of the fund herein created." Section 5 relates to condemnation of any property the council is unable to purchase, and section 6 to the leasing of property purchased until buildings thereupon are removed and the disposition of said buildings, the proceeds to be included in the said fund. Section 7 directs the sale of a tract of land known as Governor Square, the proceeds to be turned into said fund, and section 8 declares that no part of the purchase price nor warrants or certificates issued therefor or interest thereon shall be paid otherwise than from said fund.

Were the lots to be paid only from this fund known as the capitol extension and improvement fund derived from the source mentioned on warrants drawn on the state treasury, the foregoing sections, it will be noted in passing, are complete in themselves and adequate for the objects intended. The sections following relate entirely to the anticipation of part or all of said fund. Section 9 enacts: "That for the purpose of accomplishing the earliest possible completion of the work contemplated herein and the carrying out of the plans provided for in this act, the executive council may anticipate the collection of the tax herein authorized to be levied for the extension and improvement of the capitol grounds, and for that purpose may issue interest-bearing warrants or certificates carrying a rate of interest not to exceed five per cent. per annum to be denominated 'capitol grounds extension and improvement warrants or certificates' and said warrants or certificates and interest thereon shall be secured by said assessment and levy and shall be payable out of the respective funds hereinbefore named, pledged to the payment of the same, and no warrants shall be issued in excess of taxes authorized or to be levied to secure the payment of the same.

It shall be the duty of the State Treasurer to collect said several funds and to hold the same separate and apart in trust for the payment of said warrants or certificates and interest and to apply the proceeds of said funds pledged for that purpose to the payment of said warrants or certificates and interest. Such warrants or certificates shall be issued in sums of not less than one hundred nor more than one thousand dollars each running not more than ten years bearing interest not exceeding five per cent. per annum, payable annually or semi-annually and shall be substantially in the following form." Following this is a form of such certificate, not necessary to be set out. Section 10 directs that the certificates be issued only in pursuance of a resolution of the executive council specifying conditions as to amount, rate of interest and the like. Section 11 provides for the registry of said certificates, with the Treasurer of State, and section 12 authorizes the sale thereof at not less than par value. The contention of the plaintiffs is that the entire act is in violation of sections 2 and 5 of article 7 of the Constitution of the state, in that it authorized the creation of an indebtedness in excess of that therein permitted, without submitting the question to a vote of the people. These constitutional provisions may as well be set out:

"Sec. 2. The state may contract debts to supply casual deficits or failures in revenues; or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent whether contracted by virtue of one or more acts of the general assembly, or at different periods of time, shall never exceed the sum of two hundred and fifty thousand dollars; and the money arising from the creation of such debts shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever."

"Sec. 5. Except the debts hereinbefore specified in this article, no debt shall be hereafter contracted by, or on behalf of the state, unless such debt shall be authorized by some law for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax, sufficient to pay the interest on such debt, as it falls due, and also to pay and discharge the principal of such debt, within twenty years from the time of the contracting thereof; but no such law shall take effect until at a general election it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt created thereby; and such law shall be published in at least one newspaper in each county, if one is published therein throughout the state, for three months preceding the election at which it is submitted to the people."

In determining whether the act in authorizing the issuance of interest-bearing certificates or warrants is inimical to these provisions of the Constitution, several questions necessarily are involved: (1) Would these certificates, if issued, constitute "expenses not otherwise provided for" within the meaning of section 2 of article 7 of the Constitution? (2) Can the executive council anticipate the revenues collectible within the biennial period by the issuance of certificates in advance payable therefrom as authorized without creating a debt within the meaning of these sections? (3) If these inquiries be answered in the affirmative, should the act be interpreted as empowering the executive council to issue certificates in anticipation of current revenues and in an amount beyond these not exceeding \$250,000, or equaling the collectible taxes during the entire ten years within which levies are directed to be made? (4) If the latter be the true construction, then does the act authorize the creation of a debt in excess of the constitutional limitation?

I. Plainly enough, the certificates contemplated in section 9 of the act were not intended "to supply casual deficits or failure in revenues." Might they be issued "to meet expenses not otherwise provided for"? The state was created by the people to perform for them certain functions, the necessity for the performance of which was the only object of its creation. These are in part defined in the Constitution and more fully in the statutes. The three co-ordinate branches of government created for the protection and well-being of the people must be maintained and afforded facilities and equipment essential to the efficient discharge of the duties devolving upon them. The insane and feeble-minded are to be cared for, those convicted of crime restrained of their liberty, the free school system maintained, opportunities for higher education afforded, and institutions provided for the deaf, dumb, and blind, as well as for such others as the humane sentiments of modern life deem proper subjects for the care of the state. The attainment of these objects involves the exercise of great business sagacity and the expenditure of large sums of money, and the manifest design of the people in inserting this clause in the Constitution was to enable those charged with the duty of providing necessary funds for the maintenance of the government to exercise some discretion in distributing the burden of taxation, in event unusual or extraordinary expenditures are deemed necessary beyond the period for which ordinary revenues are provided. To meet expenses not otherwise provided for—that is, not made available in some other or different way or manner—the General Assembly is authorized to incur an indebtedness to a limited amount precisely as is done in the exigencies of private business. In other words, the state is not denied the advantage of postponing payment of expenses which may be extraordinary or

unusual which are found beneficial in the ordinary enterprises of life. The objects for which "expenses" may be incurred are not defined, but left to the discretion of those endowed with the power of incurring them. "Expense" is defined in Webster's Dictionary as meaning "that which is expended, laid out or consumed; outlay; and hence the burden of expenditure; charge; cost." And "price" is said to be a synonym. Expenses when incurred is evidently what is meant, for there could be no expense by the state unless made in pursuance of law and the debt authorized may be created to meet such expenses. Manifestly, the levy of a tax collectible in the future would not constitute a provision for expenses presently created, and the mere fact that a future levy of taxes is authorized and the collection of these may subsequently be available to discharge the obligation assumed in the present expenditures does not obviate right to create debt therefor. In other words, a statute may authorize expenses to be incurred, and at the same time direct the issuance of evidence of debt in the way of bonds, warrants, or certificates, to meet such expenses and in the same act provide for taxation out of which to extinguish the debt. The act under consideration directs the executive council to purchase the grounds about the capitol and thereby to incur an expense. For this purpose, the levy of one-half of a mill on all taxable property of the state is ordered for each of the years of the biennial period, 1914 and 1915. Whether the revenue for these years available for the purchase of the grounds will be sufficient was not known. Were this inadequate, however, there would be no fund to meet this deficiency, and such deficiency might not be anticipated as will hereafter appear without incurring an indebtedness by the state. True, the levy of taxes sufficient to provide \$150,000 per annum thereafter is authorized by the act, but this might not be available "for the purpose of accomplishing the earliest possible completion of the work contemplated."

The manifest design in allowing the executive council to issue certificates payable out of funds other than those collected during the biennial period was to assure "the earliest possible completion of the work," and we are of opinion that any deficiency in the revenues collectible within that period and available for this purpose would be an expense to meet which a debt against the state not exceeding \$250,000 may be incurred by the issuance of certificates or warrants in pursuance of the last four sections of the act under consideration.

II. Certificates or warrants issued in anticipation of revenues collectible within the biennial period and payable therefrom do not create a "debt" within the meaning of that term as used in the Constitution. The General Assembly convenes on the second Monday of January of the odd-numbered years and provides for reve-

nues necessary to the performance of the different governmental functions during the ensuing two years. Its power of taxation is unlimited, and the taxes authorized to be levied and collected are legally certain to reach the state treasury, and therefore are as certainly available to meet the expenses authorized as are those collectible annually by a municipality.

It is well settled in this state that a municipality may anticipate the collection of taxes, and in defraying ordinary expenses may make appropriations and incur valid obligations to pay "in advance of the receipt of its revenues," even though the treasury be empty, and no actual levy made, and the city be otherwise indebted to the full limit. *Grant v. City of Davenport*, 36 Iowa, 396; *Dively v. City of Cedar Falls*, 27 Iowa, 227; *French v. City of Burlington*, 42 Iowa, 614; *Phillips v. Reed*, 107 Iowa, 331, 76 N. W. 850, 77 N. W. 1031; *City of Cedar Rapids v. Bechtel*, 110 Iowa, 198, 81 N. W. 468. In some other states the levy of taxes must actually have been made in order to warrant the anticipation of revenues by issuing warrants in advance.

In the Phillips Case it was said, in speaking of certain warrants: "If the city had on hand or in prospect, at the time these warrants were issued, funds with which to meet them without trenching upon the rights of creditors for current expenses of the city, then the warrants were valid, although such funds may have been thereafter wrongfully applied to another purpose."

Warrants issued in anticipation of taxes are held not to constitute a debt on the theory that moneys, the receipt of which is certain from the collection of taxes, are regarded as for all practical purposes already in the treasury and the contracts made upon the strength thereof are treated as cash transactions. Even though a municipality is indebted to the constitutional limit, this does not prevent it from levying such taxes as are authorized by law nor from issuing warrants within the limits of such levy in anticipation of their collection, and, if the warrants issued are within the amounts lawfully levied, they do not create an additional debt. The proper officers of the state, as the executive council in this state, may anticipate the revenues to be expended by it which the Legislature has authorized to be collected within the biennial period, and contracts contemplating the appropriation of these are not regarded as debts against the state. As said by Field, C. J., in *State v. McCauley*, 15 Cal. 430: "The eighth article (that limiting the state indebtedness corresponding to this state) was intended to guard the state from running into debt, and to keep her expenditures, except in certain cases within her revenues. These revenues may be appropriated in anticipation of their receipt as effectually as when actually in the treasury."

The same rule was laid down in *State v. Medberry*, 7 Ohio St. 529; the court saying: "So long as this financial system is carried

out in accordance with the requirements of the Constitution (two years' restriction), unless there is a failure or defect of revenue, or the General Assembly have failed, for some cause, to provide revenue sufficient to meet the claims against the state, they do not and cannot accumulate into a debt. Under this system of prompt payment of expenses and claims as they accrue, there is, undoubtedly, after the accruing of the claim, and before its actual presentation and payment, a period of time intervening in which the claim exists unpaid; but to hold that for this reason a debt is created would be the misapplication of the term 'debt,' and substituting for the fiscal period a point of time between the accruing of a claim and its payment, for the purpose of finding a debt; but, appropriations having been previously made and revenue provided for payment as prescribed by the Constitution, such debts, if they may so be called, are, in fact, in respect of the fiscal year, provided for, with a view to immediate adjustment and payment. Such financial transactions are not therefore to be deemed debts." The same rule was laid down in *State v. Parkinson*, 5 Nev. 15.

The Supreme Court of South Dakota was called upon to advise the Governor of that state concerning the anticipation of the revenue by the issuing of warrants, and in response thereto said: "By general law, the Legislature has provided for the levy of an annual tax for meeting the ordinary expenses of the state. By so providing, in a constitutional manner, for the levy of a sufficient tax, it has provided a revenue, to the extent of the tax, for the payment of the ordinary or current expenses of the state. It may then make appropriation of such revenue for diverse and specific purposes, included within the ordinary expenses of the state, and may authorize the issue of evidence of such appropriation in the form of warrants, without incurring an indebtedness therefor, within the meaning of said section 2, art. 13, of the Constitution. If this were not so, then the appropriations of each Legislature in excess of the cash actually in the hands of the State Treasurer, and in the fund from which such appropriations were made, would, to the extent of such excess, constitute the creation of a debt against the state. It is well understood that the aggregate of the general appropriations of each Legislature in this, as in other states, generally greatly exceeds the amount of actual cash in the hands of the State Treasurer when such appropriations are made. The taxes levied and in process of collection are treated as in the state treasury, though not yet actually paid over to the State Treasurer. It has been ruled in several cases, and by high judicial authority, that state funds, so in sight, but not yet in hand, may be anticipated and appropriated as though actually in possession of the State Treasurer. Critically considered, it may constitute the incurring of an indebtedness; but it is not an indebtedness repugnant to the Constitution,

because its payment is legally provided for by funds constructively in the treasury. If the drawing of a warrant upon the state treasury is the incurring of indebtedness by the state, then the drawing of such warrant would violate the Constitution, even if there was money in the state treasury to pay it, if the constitutional limit of indebtedness had been reached; for there must always be some time intervening between the drawing of the warrant and its payment, and during such time the indebtedness of the state would be increased beyond the constitutional limit. Such an interpretation of the constitutional limitation would obviously be too hypercritical to be practicable or reasonable. It being once established, as we think, it is by the authorities already cited, that the revenues of the state, assessed and in process of collection, may be considered as constructively in the treasury, they may be appropriated and treated as though actually and physically there; and an appropriation of them by the Legislature does not constitute the incurring of an indebtedness, within the meaning of section 2, art. 13."

See, also, *In re Incurring of State Debts*, 19 R. I. 610, 37 Atl. 14, where the court said, in answer to the inquiry from the Governor as to whether the General Assembly could in time of peace incur state indebtedness or borrow money in excess of the limit in the Constitution, that "in thus answering (in the negative) we do not mean to be understood that the General Assembly may not make appropriations or authorize the expenditure of money to an amount exceeding the sum named. The power of taxation resides in the General Assembly, and therefore it has power to raise by taxation such sums as it may deem necessary for the expenses of the state and the public benefit; and it may appropriate or authorize the expenditure of the money so raised for the purposes for which they are raised, and even, as we think, in anticipation of their actual payment into the state treasury."

The principle seems well established in reason and by authority. The power of General Assembly to tax is unlimited save by the two years' period. Of course, it may enact laws exacting the levy of a tax annually for any period in the future, but this is always subject to repeal or modification by subsequent General Assemblies. But revenues provided for during the biennial period are available to a legal certainty, for no General Assembly will convene to repeal or modify within that time. The anticipation then by the issuance of warrants or certificates to be paid therefrom is of the revenues certainly to be collected, and therefore is in the nature of a previous appropriation of funds subsequently to reach the treasury, the setting apart a portion thereof for a specified purpose, rather than the creation of an indebtedness against the state.

(To be continued in April number.)

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