DIGGING DEEP DOWN

Inquiry Into the Existing Indebtedness of the County,

MADE BY THE NEW SELECTMEN.

Exhaustive and Important Report From County Attorney Williams.

The following report was submitted at this afternoon's session of the county court by Mr. C. O. Whitemore, the newly-elected county attorney. It will doubtless be read with considerable interest, containing as it does some new and striking features:

To the Hon. the County Court of Salt Lake County, Utah:

Gentlemen — In accordance with your request I have examined into the financial condition of this county as shown by the annual statements of the county treasurer and county clerk for the years 1892, 1893 and 1894, with a view of ascertaining the existing indebtedness of the county. I have also examined the statutes of Congress and of this Territory pertinent to the subject, with the view of ascertaining whether such indebtedness is in excess of the limit prescribed by law, in order to determine as to the power of this court to incur further liabilities, and beg leave to submit herewith the result of such investigation.

Section 4 of an act of Congress approved July 30, 1886, provides that no county shall ever become indebted in any manner or for any purpose to any amount in the aggregate, including existing indebtedness, exceeding four per centum on the value of the taxable property within such county, to be ascertained by the last assessment for territorial and county taxes previous to the incurring of such indebtedness; and all bonds or obligations in excess of such amount given for such corporate purpose shall be void. Vol. 1, Compiled Laws of Utah, 1888, p. 30.

This section where it fixes the limit within which the indebtedness of the county must be confined, does not confer upon the county any power which exists by virtue of its charter, or which is given by other statutes in the chart of that limit, the granting of such power being left to the Territorial Legislature. The question next to be determined is, what powers have been conferred by the Legislature upon the counties of this Territory to create liabilities and incur indebtedness.

Section 173, Compiled Laws of Utah, 1888, p. 200, provides that no county shall incur any indebtedness or liability in any manner, or for any purpose, in an amount exceeding in any year the total amount of its income and revenue for the two fiscal years immediately preceding the incurring of such indebtedness. And that any indebtedness or liability contrary to this provision shall be void.

Section 174, following, provides: That all contracts, authorizations, allowances, payments and liabilities to pay, make or attempt to be made, in violation of this act, shall be absolutely void, and shall never be the foundation of a claim against such county.

Section 175, following, provides: That any private judge or selectman of any other officer who knowingly authorizes, or aids to authorize, or audits or allows any claim or demand upon or against the county, or any fund thereof, in violation of the provisions of this act, shall be liable in person and upon their several official bonds, to any person damaged by such illegal authorization, to the extent of his loss.

Section 185, following, provides: That the court must note, for any purpose, contract debts of municipalities, except in pursuance of law, as constituting indebtedness or liability, in any manner or for any purpose, exceed in any year the income and revenue of such county for the fiscal years immediately preceding the incurring of such indebtedness.

The foregoing sections are ambiguous, and open to two constructions; one that the county may in such year create liabilities, exclusive of existing indebtedness, to an amount not exceeding the total income and revenue of the county for the two fiscal years immediately preceding the incurring of such liabilities, and the other, that the liabilities of a county, including existing indebtedness, cannot exceed in any fiscal year the income and revenue of such county for the two fiscal years immediately preceding.

The latter is, in my opinion, the more rational construction and is more in conformity with the intent of the legislature. This view of the law is strengthened by the later provisions of the legislature as found in "An Act authorizing counties to issue bonds for the purpose of funding outstanding indebtedness, approved March 10, 1892, which provides as follows: That whenever it shall be necessary to erect, alter, and to complete or repair the court house, jail or other county buildings or purchase ground therefor, or make other county improvements, or whenever it may be desirable in lieu of a storage any existing debt incurred for county purposes, and the revenue afforded by a reasonable taxation are considered insufficient to do the same, the county court may issue negotiable coupon bonds in any sum of money not exceeding one per cent of the assessed property within such county, to be ascertained by the last assessment for territorial and county taxes previous to the incurring of such indebtedness; and all bonds or obligations in excess of such amount given for such corporate purpose shall be void. Vol. 1, Compiled Laws of Utah, 1888, p. 31.

This section where it fixes the limit within which the indebtedness of the county must be confined, does not confer upon the county any power which exists by virtue of its charter, or which is given by other statutes in the chart of that limit, the granting of such power being left to the Territorial Legislature. The question next to be determined is, what powers have been conferred by the Legislature upon the counties of this Territory to create liabilities and incur indebtedness.

Section 173, Compiled Laws of Utah, 1888, p. 200, provides that no county shall incur any indebtedness or liability in any manner, or for any purpose, in an amount exceeding in any year the total amount of its income and revenue for the two fiscal years immediately preceding the incurring of such indebtedness. And that any indebtedness or liability contrary to this provision shall be void.

Section 174, following, provides: That all contracts, authorizations, allowances, payments and liabilities to pay, make or attempt to be made, in violation of this act, shall be absolutely void, and shall never be the foundation of a claim against such county.

Section 175, following, provides: That any private judge or selectman of any other officer who knowingly authorizes, or aids to authorize, or audits or allows any claim or demand upon or against the county, or any fund thereof, in violation of the provisions of this act, shall be liable in person and upon their several official bonds, to any person damaged by such illegal authorization, to the extent of his loss.

Section 185, following, provides: That the court must note, for any purpose, contract debts of municipalities, except in pursuance of law, as constituting indebtedness