

**MUNICIPAL BONDS HELD VOID:
INCLUDING ISSUES ENJOINED,
REGISTRATION OR CERTIFICATION
DENIED, ISSUANCE NOT COMPELLED,
VALIDATION REFUSED AND ALL
PROCEEDINGS DETERMINING ILLEGALITY**

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BY

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PREFACE

The object of this work is the compilation, in the form of a ready reference book, of all cases in the United States holding municipal bonds void or determining their illegality prior to issuance, for use by owners and dealers in municipal bonds and banks loaning on such securities as collateral so as to guard against the illegal issues that are at the present time floating around the country like derelicts upon a sea.

Table I

As a rule, municipal bonds are free from the disagreeable taint of illegality. There are just 510 exceptions to the rule, involving \$199,965,512, as shown in Table I. The only states and territories in which municipal bonds have never been held void are Alaska, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Massachusetts, Maine, Montana, New Hampshire, Nevada, New Mexico, Ohio, Oregon, Rhode Island, Utah, Vermont and Wyoming. In 249 decisions municipal bonds to the extent of \$23,626,955 have been held absolutely void after issuance and delivery. In 56 additional cases the amount was not stated, making the total number of cases 305. Issue was enjoined in 125 cases of which 105 involved the amount of \$171,646,600, the amount not being stated in 20 cases. In other proceedings preliminary to issuance, such as cases in which registration or certification was denied, validation refused or issuance not compelled, there is a total of 80 cases, of which 65 involved the sum of \$4,691,957. The amount was not stated in 25 cases.

It is often believed that if municipal bonds otherwise void are held by bona fide purchasers before maturity without notice of any defects, the bonds to all intents and purposes are as though valid. This idea is seriously disproved in 153 cases of which 136 cases held that bonds to the extent of \$6,416,506 were void though held by such bona fide purchasers. The amount was not stated in 17 cases. This rule has been laid

down in Alabama, Arkansas, California, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, Virginia and Wisconsin.

Nor are municipalities estopped from denying the validity of their bonds by recitals in the bonds that all statutes and proceedings preliminary to issuance have been fully complied with, as is proven in 45 cases of which 41 cases involved the sum of \$1,783,965, the amount not being stated in 4 cases. This rule holds good in the states just mentioned with the exception of California, Indiana, Louisiana, Maryland, Pennsylvania, Tennessee and Virginia.

A few states require the registration of municipal bonds with the state officials, which is declared by statute to cure all defects. Notwithstanding such registration 2 cases in Illinois, one involving \$50,000 and the other, amount not stated, were held void though registered with the state officials. There are 4 cases in Iowa amounting to \$221,000; 1 case in Missouri amounting to \$6,000 and 1 case in Nebraska amounting to \$87,000, making a total of \$364,000 in 7 cases, 1 case the amount not stated, making a total of 8 cases.

Oftentimes defects are sought to be eliminated and the bonds validated by special legislative act. Such legislation is not effective if the municipality lacked the power originally to issue the bonds, as is shown in 25 cases of which 21 cases involve the sum of \$1,593,513. These issues were held void though attempts had been made to ratify and validate them by legislative act. This rule has been laid down in 14 states. In this connection, it is interesting to note the large number of special acts in the State of New York which validated or attempted to validate bonds that have been actually issued and delivered but in which some illegality has appeared. This number seems to be increasing each year in this state. In 1904 there were 12 such special acts; 1905, 22 acts; 1906, 5 acts; 1907, 23 acts; 1908, 25 acts; 1909, 20 acts, and 1910, 25 acts. Whether this special legislation really validates the issues can be determined only in future suits by some inquisitive taxpayer.

Municipal bonds have been held void though interest had been paid on them in 13 cases, 10 of which involved \$721,000.

All of the cases cited above have been actually decided in reported decisions. In many other cases the points being considered were not actually decided although they undoubtedly existed. For instance,—probably in nearly every case the bonds were held by bona fide holders, but the question was not passed upon by reason of the many precedences in the state or for other reasons. Probably the holders relied upon the recitals in many other cases, although the point was not actually decided. This is also true of the bonds that were registered or upon which interest had been paid.

The reasons for invalidating bonds, either before or after delivery, may be grouped under four principal heads. 1st, the legislative act relied upon was held unconstitutional; 2d, the bonds exceeded or would exceed the limit of indebtedness; 3d, lack of statutory authority; 4th, proceedings leading up to issuance were not complied with, or in some way were irregular.

Municipal bonds were held irregular in 51 cases of which 40 involved \$23,471,600, amount not stated in 11 cases, because the legislative act relied upon as authority was held unconstitutional.

The bonds exceeded the debt limit or if issued would have exceeded such limit in 61 cases of which 55 amounted to \$12,348,005; amount not being stated in 6 cases.

Lack of authority was the cause of illegality in 148 cases of which 119 involved \$82,040,163; amount not being stated in 29 cases.

Irregular proceedings were the cause of rendering bonds that had been issued or were about to be issued illegal in 232 cases, of which 203 amounted to \$81,078,043.

A few issues were illegal for two or more of the reasons just stated, in which case they have been repeated in the various figures; but this occurs probably less than a dozen times.

In 6 cases bond owners attempted to hold a city or county responsible on special assessment bonds. This situation arose in Arkansas, one case, amount not stated. In California there are 2 cases of which the Montgomery Avenue bonds amounting to \$1,575,000, were the largest. The other, the Dupont Street bonds, involved \$5,000 although the total amount of the issue may have been considerably greater. Another case arose in Indiana amounting to \$12,000, and a similar case in Wisconsin

amounting to \$20,315. In all of these cases the bondholder may have had a remedy against special assessments, but could not hold the municipality itself liable.

It will thus be seen that irregular proceedings are responsible for the greater part of illegality being followed in turn by cases of lack of authority, exceeding debt limit and unconstitutional acts.

In all of the above computations, the total amount of the issue is considered where it is possible to learn the same from the decisions, though only a few of the bonds of the same series were in litigation. Where the entire amount of the debt could not be given, then the amount actually involved was taken, although it would, of course, be far below the amount of the entire issue. The figures do not include state issues, which seldom reach the courts and which may be repudiated without cause, leaving no remedy to the holder.

In passing it is of interest to notice that North Carolina, South Carolina, Georgia, Kansas and Virginia have repudiated bonds running into many millions of dollars. On the other hand, municipalities whose bonds have been held void have oftentimes compromised or paid off the indebtedness in other ways in order to save their credit. This is true of Chicago whose temporary loan certificates amounting to \$4,500,000 were held void, after issuance and delivery, because they exceeded the debt limit. It is stated, however, that the city subsequently paid back to the purchasers of the certificates at least \$4,000,000, leaving an apparently actual loss to the purchasers of \$500,000. It does not appear whether the same arrangement was made concerning a subsequent issue of \$3,000,000, temporary loan certificates of the same city which were held void for the same reason.

Table II

In Table II will be found the amounts of bonds held void in the various kinds of municipalities and the purpose of such bonds. There are 84 cases of county bonds held void after issuance and delivery of which 64 involved the sum of \$9,793,104. City bonds have been held void in 77 cases of which 68 amounted to \$9,629,925. Town and parish bonds have been held void to the extent of \$2,810,375 in 86 cases, the total number of cases being 101.

Village or borough bonds are considered separately although the political subdivision closely resembles that of the town or parish; \$203,400 of such bonds have been held void in 15 cases, the total number of cases being 17.

Twenty-seven decisions have held school district bonds void of which 22 make a total of \$198,650.

Irrigation districts are a new invention and escape very lightly. California is the only state in which irrigation bonds have been held void after issuance and delivery. In that state there are 4 cases of which 2 involved the sum of \$400,000, amount not stated in the other 2.

Illinois stands forth with 1 issue of levee district bonds amounting to \$648,000 held void after issuance and delivery.

It is interesting to note that not a single county of the state of New York has had its bonds declared void and only one city issue, amounting to less than \$12,000, although there are 22 cases of town bonds held void of which 17 involved the sum of \$950,000.

By far the greatest number of void bonds were issued by municipalities in aid of railroad enterprises, a cause which is now almost entirely eliminated. 148 cases of which 117 amounted to \$8,344,250, is the record for such purpose.

School purposes appear in 36 cases of which 28 involved the sum of \$485,675.

Waterworks, gas and electric lighting plants, in other words, municipal ownership of public utilities, is responsible for actual losses amounting to \$252,100 in 11 cases, amount not being stated in 1 additional case.

The loss in bonds issued for public improvements such as streets, bridges, roads, parks and buildings and other public improvements amounted to \$2,446,679 in 27 cases, the amount not being stated in 8 additional cases.

Private enterprises were a favorite source of illegality in issues held void after delivery as appears in 19 cases of which 18 involved the sum of \$2,584,000. Of this amount, however, \$2,000,000 represents the fire loan bonds of the city of Charleston, S. C.

Refunding bonds were held void after issuance and delivery in 20 cases of which 16 amounted to \$980,300.

For the purpose of paying general indebtedness, bonds to