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ONE RESULT OF THE DOLLAR AND ONE-HALF TAX LAW

By HARRY T. ICE* and MAYBURN F LANDGRAF**

At the special session of the state legislature in 1932 there was enacted a law later known as the Dollar and One-Half Tax Law.[1] The law was sponsored by groups interested in reducing the tax upon real estate. The law provided for a blanket limitation on tax levies upon real estate in any particular territory of $1.50 per hundred of assessed valuation. The law recognized that rates exceeding $1.50 would be a necessity in many units of government and provided for a tax adjustment board to review the levies of all units within a county vesting authority in the board to authorize a levy in excess of $1.50 should an emergency exist for such a levy.[2] The act also provided for an appeal from the tax adjustment board's action to the State Board of Tax Commissioners if the rate ultimately fixed exceeded $1.50.

The law was subsequently repealed and re-enecated in substance in 1933.[3] Two principal changes were made by the 1933 law. The levy limit in territory outside the limits of incorporated cities and towns was restricted to $1.00 per hun-

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1 Chapter 10, Acts 1932.

2 ". . the levy shall not exceed the total of one dollar and fifty cents for all such corporations; Provided, however, That if such board by a vote of at least five members thereof shall determine that an emergency exists for a total levy in excess of said rate of one dollar and fifty cents, including said state tax levy, upon the property in any municipal corporation for all municipal corporations for which the property therein is taxable, then such board shall have the power to fix such a tax levy therein and apportion the same among the different municipal corporations for which the property in such taxing district is taxable as is necessary to meet such emergency, though the total rate so fixed shall exceed the rate of one dollar and fifty cents on each one hundred dollars." Chapter 10, Acts 1932.

3 Chapter 237, Acts of 1933; Sections 64-301 et seq. Burns Stat. 1933.

dred, while the levy limit in territory within the limits of incorporated cities and towns remained at $1.50 per hundred. The old emergency provision remained.[4] A provision was added to the law to the effect that the tax adjustment board should have no power to reduce any levy made for (a) the purpose of retiring obligations incurred prior to August 8, 1932,[5] or (b) levies made for funding obligations issued prior to August 8, 1932, or (c) any levy made for the purpose of funding any judgment.

The Dollar and One-Half law has had some very wholesome results. It has created a body with power to review levies in the local community with hearings granted before a local board. The proceedings of these boards have been given wide publicity. A public consciousness as to the cost of government not evidenced before except by very special groups has been created.

However, the law in its operation has had one result that

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[4] Under somewhat similar tax statutes, various Courts have held that "an emergency" is "overwhelming adversity" or "an unforeseen occurrence, or combination of circumstances calling for immediate action." Kautz v. Board of Commissioners of Howard County (1933), 204 Ind. 484, The First National Bank v. VanBuren School Township (1911), 47 Ind. App. 79; San Christina Investment Co. v. San Francisco (1914), 167 Cal. 141, 141 Pac. 384; Lyons v. City of Bayonne (1925), 101 N. J. L. 455, 130 Atl. 14, Muskegon Heights v. Danigelis (1931), 253 Mich. 260, 235 N. W 83, State ex rel. v. Zangerle (1916), 95 O. S. 1, 115 N. E. 498. However, Cf. Wayne Township v. Brown (1933), 205 Ind. 437, the Supreme Court of Indiana has held that the taxpayer's only remedy where a rate in excess of $1.50 has been fixed by the tax adjustment board is an appeal to the State Board of Tax Commissioners. The Court has also held that the determination of the tax adjustment board and the State Tax Board as to whether "an emergency" exists is final and conclusive and that no relief will be granted in the Courts in the absence of showing of fraud in procuring the determination. Murray v. Zook (1933), 205 Ind. 669; Payne v. Grossart (1934), 207 Ind. 157; Hoess v. Whitaker (1934), 207 Ind. 338, Martin v. Ortlieb (1936), (Ind. Sup. St.), 1 N. E. (2d) 1000.

[5] August 8, 1932, was the date upon which Chapter 10 of the Acts of 1932 became effective. However, even if the exemption referred to in the text was not contained in the law, still bonds issued prior to August 8, 1932, could not be affected by the law. The levy to pay such bonds would have to be made in accordance with the provisions existing at the time the bonds were issued. Such existing provisions become a part of the bondholder's contract and cannot under the Constitution of the United States be impaired by subsequent legislation. Rawles County v. U. S. ex rel. (1882), 105 U. S. 733, Mayor of Quincy v. U. S. ex rel. (1885), 113 U. S. 332.

has affected the credit of the local units of the government[6] which has already cost and will continue to cost the property taxpayer thousands of dollars for many years to come. The law was intended to bring about a reduction in the cost of government, but due to the scope of its provision it has in one respect resulted in an unnecessary increase in that cost.

The writers of this article do not attack the principle of the $1.50 law if limited to the costs of operation of government, that is, current operating expenses of the various units of government. The failure to so limit the scope of the law has produced a result which the framers of the law undoubtedly did not anticipate.

The law is not limited in its scope to levies for operating expenses of government, but includes certain levies for debt service. The 1933 law, by virtue of the exemption of certain levies for debt service, created a distinction between the type of bonds issued by a particular unit of government. Indiana bonds by the law have been divided into two classes, one group known as "limited tax bonds" and the other as "unlimited tax bonds."

So far as the legality of the bond is concerned, both the limited and unlimited tax bonds are valid legal obligations of the unit which issues them.[7] The legal distinction between the two is very narrow.[8] For an economic reason "limited tax

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6 See "The Effect of Tax Rate Limits on Municipal Credit" by Frederick L. Bird. Volume XXIV, No. 11, National Municipal Review.

7 The Supreme Court of the United States in the cases cited in footnote 11, infra, has held that limited tax bonds are legal and enforceable to the extent of the power of the unit to levy taxes—that is, a levy may be mandated up to the limit provided by law.

8 An action of mandamus will lie to force the levy of a tax to pay an unlimited bond. Gardner v. Haney (1882), 86 Ind. 17. McQuillin Municipal Corporations (2d Ed.), Section 2722. A limited tax bond where the required levy to pay the bond was clearly within the limits of the $1.50 law might be enforced through the medium of a mandate to have the tax levied to pay the bond. Where the required levy would exceed the limits fixed by the $1.50 law, then under the theory of the cases cited in footnote 11, infra, the bondholder might proceed to procure a judgment against the unit of government issuing the bond. Query: Are not judgments procured on even limited tax bonds enforceable by the action of mandate even though the rate of the tax levy will exceed the limits fixed in the $1.50 law?

bonds" must be paid. Any unit of government that defaults its obligations destroys its credit. However, the mere fact that one bond is payable out of taxes "within limits provided by law" renders it a less desirable obligation from the standpoint of sale than the bond which is payable from "unlimited ad valorem taxes."

Tax levy limitations are not new to the statutes of the State of Indiana, but the blanket type of limitation of the $1.50 law is radically different from anything that previously existed in the State. Many statutes of the State contain *specific limitations* upon tax levies to pay bonds issued for particular purposes.[9] For example, a county issuing bonds for the pur-

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[9] Specific limitations on levies to pay the principal and interest of bonds is indicated at the rate per $100 of assessed valuation.

COUNTIES: Hospital Bonds in aid of fourth and fifth class cities (.10), Section 22-3214 Burns Stat. 1933, Hospital Bonds (.002 and .10), Sections 22-3215, 22-3220 Burns Stat. 1933, Park Bonds for purchase of land in counties of 12,000 to 16,000 (.02 for twenty years), Section 26-1510 Burns Stat. 1933; Park Bonds for purchase of land (.01 for twenty years), Section 26-1514, Track elevation bonds, Marion County (.03), Section 48-3409, Burns Stat. 1933, Flood prevention bonds, Marion County (.04), Section 48-4721, Burns Stat. 1933.

CIVIL CITIES: Sinking fund bonds (.10), Sections 48-1701, 48-1721, Coliseum site bonds, first class cities (.003), Section 48-2529, Burns Stat. 1933; Track elevation bonds in cities over 100,000 (.06), Section 48-3409; Track elevation bonds, cities of 35,000 to 45,000 (.10), Section 48-3808, Burns Stat. 1933, Track elevation bonds, cities of 19,060 to 22,000 (.10), Section 48-3818, Burns Stat. 1933, purchase of stock in utility bonds (.35 and .50), Section 48-7209, Burns Stat. 1933, School aid bonds in cities and towns (.50), Section 28-1304, 28-1306, Burns Stat. 1933, School aid bonds, cities of 70,000 to 85,000 (.15), Section 28-1315, Burns Stat. 1933, Flood prevention bonds, cities 100,000 to 300,000 (.04), Section 48-4801, Burns Stat. 1933, Flood prevention bonds cities of first class (.04), Section 48-4720, Burns Stat. 1933.

SCHOOL CITIES: General limitation on all bonds. Cities over 100,000 (.51), Section 28-2027, real estate and improvement bonds, cities over 100,000 (.27), Sections 28-2026, 28-2029, Burns Stat. 1933, Library buiding bonds, cities over 100,000 (.04), Section 28-2027, Burns Stat. 1933, manual training real estate and building bonds, cities over 100,000 (.05), Section 28-2027 Burns' Stat. 1933, real estate purchase and building bonds, cities of second class (.18), Section 28-1328, Burns Stat. 1933, Real Estate purchase and buiding bonds in all except cities of first and second class (.25), Section 28-1323, Burns Stat. 1933, Real Estate purchase and building bonds, cities of 45,000 to 55,000 (.50), Section 28-1704, Burns Stat. 1933.

CIVIL TOWNS: General limitation (.50), Section 48-301 (18), Burns Stat. 1933.

SPECIAL DISTRICTS: Library bonds in cities and towns (.10), Section 41-307, Library bonds in counties (.10), Section 41-515, Burns Stat. 1933.

pose of elevating track crossings within the county is restricted in the levy it may make for the purpose of providing for the payment of the bonds and interest to 3c on each $100 of taxable property.[10] These statutes, while they are numerous, have in almost every instance provided a maximum levy that is adequate to provide for the principal and interest of the bonds. Furthermore, bond counsel and the bond buyer in any given case could ascertain by obtaining the assessed valuation of the property in the unit proposing to issue bonds whether a levy within the *specific limitation* would be sufficient to provide for the bonds.[11] Such a calculation is impossible under

[10] Section 48-3409, Burns' Stat. 1933.

[11] Bonds issued under such statutes are legal and valid obligations but are enforceable only to the extent to which taxes may be levied within the limits provided by law. U. S. ex rel. v. Town of Cicero (1890), 41 Fed. 147 (D. C. of Ind.), 50 Fed. 147 (7 C. C. A.); Carroll County v. U. S. ex rel. (1873), 85 U. S. 71; U. S. ex rel. v. Macom County (1881), 99 U. S. 582, 109 U. S. 229, 144 U. S. 568; Clay County v. U. S. ex rel. (1885), 115 U. S. 616, U. S. ex rel. v. Knox County (1887), 122 U. S. 306; Scotland County Court v. U. S. ex rel. (1891), 140 U. S. 141, Beadles v. Smyser (1908), 209 U. S. 393.

Some courts have held that statutes which impose limitations upon tax levies are likewise a limitation upon the amount of debt which may be incurred. See cases collected in 97 A. L. R. 1103. However, it is quite unlikely that our courts would ever reach such a conclusion with reference to the specific levy limitation statutes and the $1.50 law for several reasons: (1) Indiana has a specific debt limitation applying to all municipal corporations (Articles 13, Section 1, Constitution of Indiana). (2) The legislature has for years recognized a distinction between tax levy limitation statutes and debt limitation statutes by writing into the same statues provisions limiting both the tax levy and the amount of debt. For example, see Sections 26-532 and Section 26-1510, Sections 26-1514, 22-3214, 22-3215, 48-3409, 48-4721, Burns Stat. 1933, Sections 48-4801 and 48-4806, Burns Stat. 1933, Sections 28-1304 and 28-1306, Burns Stat. 1933, Sections 28-1313 and 28-1315, Burns Stat. 1933, Sections 65-411 and 65-412, Burns Stat. 1933; Section 48-301 (17, 18), Burns Stat. 1933, Sections 48-1410 and 48-1701, Burns Stat. 1933; and Sections 22-3215 and 22-3220, Burns Stat. 1933. (3) The cases cited, supra, clearly hold that a tax limitation statute is not to be considered a debt limitation statute for the reason that the cases hold the bonds enforceable if at any time in the future a sufficient leeway exists for the levy of taxes. (4) It would be utterly impossible to determine when any governmental unit had reached its debt limit if the $1.50 law were held to be a debt limitation as well as a tax limitation law. The tax rate in any county is a composite of the rates of all units within the county and it cannot be known in any case until the budgets of each particular unit are finally fixed. At any given time it would be impossible to determine whether the issuance of bonds by a particular unit within the county would cause such an increase in tax rate as to cause the rate to exceed $1.50.

the *blanket limitation* of the $1.50 law since the levies limited are all levies—the levies for operating expense as well as for all debt service.[12] And the *blanket limitation* applies to levy of not one tax unit but every unit within a given territory as well as the state levy, and the number of units whose total levies are affected in every case is never less than four and may be as high as ten under existing laws.

No person could calculate the possibility of future levies being adequate to service bonds with such variables as the operating costs and debt service of several units to be considered. Thus, suppose a school city wishes to issue its bonds to build a school building, and the present tax rate within the school city is within the $1.50 limit. The bonds are to run for a period of fifteen years. Who today can say that the tax rate within the school city will for the next fifteen years be within the $1.50 limit? There can be no basis for such a calculation since the tax rate for the next fifteen years in that school city will be made up of a composite of the rates of the state, the county in which the school city is located, the civil township or townships in which the school city is located, the civil city and the various road and other special tax districts such as park and sanitary districts whose territory is the same as that of the school city. The tax rates of these various units will depend upon their requirements for operating expenses and for debt service. No one can say now what the operating expenses will be one, two or five years hence in any particular unit. The rates will also depend upon the requirements for debt service in all of these units except the state. Who can say now what those requirements will be since every one of the units, with the exception of the state, has power to issue obligations?

The $1.50 law made the bond investor wary for another reason. The law in almost every instance provided for a maxi-

12 Apparently as between levies to-pay "limited tax bonds" and levies to pay the current operating expenses of government, the latter levies would take priority and levies for the former purposes would be postponed in their favor. See Clay County v. U. S. ex rel. (1885), 115 U. S. 616. Cf. Cason v. City of Lebanon (1899), 153 Ind. 567, 576, Valparaiso v. Gardner (1884), 97 Ind. 1, 12, 13, LaPorte v. Gamewell (1896), 146 Ind. 446, 470-471, Bee v. Huntington (W Va.), (1933), 171 S. E. 539.

mum levy far below the actual requirements for operating costs and debt service.[13] Sufficient levies are obtained only by the declaration of an emergency by the Tax Adjustment Board. Hence the distinction between the type of bond whose payment is dependent upon the arbitrary action of the Tax Adjustment Board in declaring an emergency and fixing a rate high enough to pay the bond and interest and the type of bond the levy for the payment of which is not open to the Tax Adjustment Board action has become a real distinction.

In the class of "unlimited tax" bonds are those bonds payable out of levies mentioned above, namely, obligations issued prior to August 8, 1932, bonds to fund such obligations and judgment funding bonds.[14] To this group there has also been added those bonds which are issued under special statutes enacted concurrently with or subsequent to the $1.50 law, which provide for unlimited levies to pay such bonds.[15]

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[13] In the year 1932 there were only two counties in the entire state where all of the tax levies in all units within a single county were within $1.50. In these two counties the rates fixed did not meet the needs of operation and debt service. Even today a tax rate within the limits of the law is the rare exception.

[14] The language of the statute is:

"The county board of tax adjustment shall have no authority under this act to reduce specific tax levies made by the local officers for the purpose of providing funds for the payment of (a) obligations of the several municipal corporations incurred prior to August 8, 1932, or (b) funding or refunding obligations of such municipal corporations heretofore or hereafter authorized or issued for the purpose of procuring funds to pay obligations incurred prior to August 8, 1932, or (c) any judgment against such municipal corporation or obligations issued to refund the same, below the amount required to meet such obligations and the interest thereon at the times and in the amounts required by the terms of such obligations. It shall be the duty of the proper governmental bodies and officers charged with the levying of taxes to levy taxes in an amount necessary, after applying all funds then available from other sources, to pay the principal and interest of such obligations as the same become due." Section 4, Chapter 237, Acts of 1933, Section 64304, Burns Stat. 1933.

[15] County Welfare Bonds; Section 110, Chapter 3, Acts of 1936, Section 52-1313, Burns Stat. 1933, County Court House or Jail Bonds where former building destroyed by fire or wind storm. Chapter 155, Acts of 1935, Section 26-2011, Burns Stat. 1933, County Poor Relief Bonds, Section 6, Chapter 117, Acts of 1935, Section 52-609, Burns Stat. 1933, School and Civil Township Bonds to replace school buildings destroyed by fire or wind storm. Chapter 188, Acts of 1933, Section 28-3101, Burns Stat. 1933; County and Township Unit Road Redemption Bonds, Chapter 130, Acts of 1933, Section 26-1015 et seq., Burns Stat. 1933; Funding Bonds, Chapter 172, Acts of 1933, Section 61-501 et seq., Burns Stat. 1933. Query: Under Section 4 of the $1.50 law quoted in foot-

"Limited tax bonds" have borne low rates of interest due to market conditions. But even in very favorable market conditions, the "unlimited tax bond" has sold for a considerably lower interest rate than the "limited tax bond." This difference in interest rate has cost and will continue to cost the taxpayer many thousands of dollars until every "limited tax bond" now outstanding is retired. This is the one result the framers of the law did not anticipate. If the law had been limited strictly to levies for operating costs, no such result would have followed.

A calculation made upon the basis of all reported sales in the year 1936 to November 1 indicates that the average interest cost on limited tax bonds issued in that period was approximately 3.22 per cent. During the same period, the approximate average interest cost on all unlimited tax bonds issued in the State was 2 per cent. The difference between the average interest cost on these two types of obligations is 1.22 per cent. In other words, during 1936 the average additional interest cost for limited tax bonds over unlimited tax bonds exceeds 1 per cent. These figures indicate a very high additional burden upon the taxpayer. If we assume that during 1936 there will be issued approximately $5,000,000 of limited tax obligations and that those obligations have an average maturity of between eight and nine years, then the additional interest cost thrown upon the taxpayer for interest charges on this type of obligation is approximately $500,000 over what would be necessary if all of the obligations issued were "unlimited tax bonds." When it is realized that limited tax bonds have been issued since 1932, and that the marked difference has always existed betwen the interest rate on an "unlimited tax bond" and a "limited tax bond," the additional cost to taxpayers, it is obvious, must be written in terms of millions, not thousands.

There are many specific examples of the cost to the taxpayer resulting from the situation created by the $1.50 law. In X County[16] an issue of refunding bonds of A Civil City,

note 14, supra, are bonds issued to fund "funding," "refunding" or "redemption" bonds which funded obligations issued prior to August 8, 1932, unlimited obligations?

which are "unlimited tax bonds," were sold in June, 1936. The interest rate on these bonds was bid at 2 per cent, and when allowance is made for the premium paid, the actual interest cost on this issue of bonds to the County was 1.93 per cent. Just one month earlier, A School City issued $120,000 of bonds to build a school house. The boundaries of A School City and A Civil City are coterminous and both have the same high credit rating, but the interest rate bid for the school building bonds was 3½ per cent. These bonds were "limited tax bonds," and even if allowance was made for the premium, the actual interest cost to A School City was 2.79 per cent. The difference in interest cost of .86 per cent meant that over the period of the bond issue taxpayers of A School City would have to pay $10,939 more interest than would have been necessary if the School City could have issued "unlimited tax bonds" with the same interest cost as A Civil City.

Another example. B School Township sold an issue of refunding bonds in March, 1936, at an interest rate of 3¼ per cent, which when allowance is made for premium represents an actual interest cost to B School Township of 3.22 per cent. The refunding bonds were "unlimited tax bonds." The same School Township on the same day sold its school building bonds which were "limited tax bonds." These bonds bore 4 per cent interest, and when allowance is made for the premium, the interest cost is 3.75 per cent. The difference in interest cost of .53 per cent can only be explained because the school building bonds were "limited tax bonds" and the refunding bonds "unlimited tax bonds." Over the life of the school building bond issue, this extra interest cost means that the taxpayers of the Township will pay $796 more interest on this $20,000 issue of bonds than would have been necessary if the bonds could have been sold on as favorable a basis as its refunding bonds.

Still another example. In Z County in February, 1936, poor relief bonds, which are "unlimited tax bonds" were sold at an interest rate of 2 per cent and an actual interest cost of 1.96 per cent. In the following month C City, located in

[16] These examples are actual cases, with the names of the units of government omitted for obvious reasons.

Z County, sold its bonds for municipal improvements, which are "limited tax bonds" at an interest rate of 4 per cent, and when allowance is made for premium, the total interest cost to the City was 3.22 per cent. The credit records of Z County and C City were at the time of approximately the same standing. This wide difference in interest rate is due largely to the fact that one issue was an issue of "unlimited tax bonds" and the other an issue of "limited tax bonds." The total amount of the issue of C City was $425,000, and this excess interest cost over the life of the issue meant $64,260 of additional interest which the taxpayers of the City must pay.

The examples just cited are not selected cases. They actually represent a demonstrated difference which exists wherever comparison is possible.[17] The table in the footnote indicates that within units where the credit rating is somewhat similar, almost without exception the limited tax bonds sell on a more unfavorable basis than unlimited tax bonds.

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[17] The table below is one of comparative interest costs on "limited tax bonds" and "unlimited tax bonds" separated by units of government within the territory of a single county. The issuing units may be counties, townships, both school and civil, and cities or towns, both school and civil, within the particular county. We realize that the credit rating of every unit within a given county may not be of the same high grade, but the table represents such an obvious difference between the interest rates on the two types of obligations that difference in the credit rating of the particular units is relatively unimportant.

TABLE OF COMPARATIVE INTEREST COSTS ON BONDS ISSUED DURING THE FIRST TEN MONTHS OF 1936.

Unit	Approx. Int. Cost on Unlim. Oblig.	Approx. Int. Cost on Lim. Oblig.
N County	2.86	3.36
O County	1.98	3.44 3.14
P County	2.73	3.15
Q County	2.18	2.97
R County	2.99 3.22	3.75
S County	3.14 2.45	3.93 3.15
T County	2.41 1.99 2.14	2.91
U County	2.16 2.65 2.74	3.12 2.99 2.66
V County	2.12	3.09 2.89 3.25 3.21 3.19
W County	1.91 2.64 2.62	3.55 3.08 2.71
X County	1.42 1.90 1.93 1.31 1.84	3.42 3.33 2.79 3.61
Y County	2.01	4.21
Z County	1.96	3.24 3.22

CONCLUSION

If a unit of government is authorized to borrow money upon its credit, it should be given the unquestioned power to levy sufficient taxes to pay the obligations. Restrictions upon the power to levy sufficient taxes to pay obligations are always reflected in the price which must be paid for credit. If restrictions upon the use of credit are deemed desirable, those restrictions should come into play before the unit is permitted to obtain credit. There now exist general limitations upon the procuring of credit.[18] It is to the distinct advantage of the taxpayer, once the power to borrow on credit is exercised, to have the full faith and credit of the unit of government pledged to the payment of the obligation. Limitations upon the levy which may be made to pay the bonds upon the records appear to be "penny wise and pound foolish" for the reason that the bonds must ultimately be paid if the unit is to maintain its credit, and in the payment the taxpayer must carry the burden of the additional interest cost on the type of restricted obligation which was employed to obtain the credit. The law makers should seriously consider a revision of the $1.50 tax law with respect to the situation that now exists in Indiana. Such revision may leave the law in full force as to the operating costs of government to which its principle may apply without harm to the taxpayer.

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[18] Every unit of government must appropriate the proceeds of a proposed bond issue, and notice of the appropriation must be published to taxpayers and the appropriation passed upon by the State Board of Tax Commissioners. Section 64-1331, Burns Statutes 1933. Wherever a proposed bond issue exceeds $5,000, notice must be published to taxpayers of the proposal to issue bonds, and ten or more taxpayers have a right to remonstrate before the State Board of Tax Commissioners to the issuance of bonds. The State Board of Tax Commissioners has the power to approve or disapprove the proposed issue. Section 64-1332, Burns Stautes 1933.

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