

CITY BOND NOTICES

1881-1882

## THE CITY BONDS.

### Legal Opinion of the City Attorney

#### TO THE HON. BOARD OF TRUSTEES

of the City of San Diego:  
Gentlemen: In answer to your inquiry as to whether or not the outstanding bonds of this City are a legal charge against the City that can be enforced by means of the Courts, I have to say:

These bonds were issued as of date of January 1st, 1872. At that time the City was organized under the Charter of 1872. Section 10 of that Charter provides that the Board of Trustees shall have power within the City:

Thirteenth.—To borrow money upon the faith and credit of the City; but no loan shall be made without the consent of a majority of the real estate owners of the City, residing therein, previously obtained.

Fourteenth.—If the Board of Trustees desire to effect a loan for any purpose, they shall first obtain the consent of a majority of the real estate owners of the City of San Diego, at a special election to be held for the purpose, the Board of Trustees giving ten days public notice of the same; and a majority of the state owners vote in favor of such proposition the Board of Trustees shall have power to effect such loan; but not otherwise.

To pledge the faith of the City for the payment of such loan. No person except an owner of real estate in said City and residing therein, shall vote on said proposition.—Statutes of California 1872, p. 282.

Under this Charter Ordinance No. 7 was passed September 18th, A. D. 1872, calling for an election to submit the question of issuing bonds for the purpose of carrying out the same.

The election was held, and the Board of Trustees February 2d, 1873, passed Charter Ordinance No. 22, for the issue of bonds for said purpose to the amount of \$100,000. Subsequently these bonds were sold and the proceeds of the sale were used for the purpose of carrying out the same.

The bonds in question were issued upon this authority.

The recitals of the bonds as to the authority which they are issued, are as follows:

"In conformity with an act of the Legislature of the State of California, entitled 'An Act to Incorporate the City of San Diego,' March 7th, 1872, and in accordance with the authority conferred upon the Board of Trustees of said City by a majority of the real estate owners thereof at a special election held in said City on the 27th of September, A. D. 1872, to issue bonds of said City."

Now this is to certify that:

These bonds are negotiable instruments by which the City of San Diego is bound.

The bonds are also by special provisions of the Ordinance of this State.—Article 10 of the Constitution of the State of California, and Chapter 10 of the Statutes of California, 1872, p. 282.

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And in this class of cases we may remark that the Supreme Court of the United States does not hold itself concluded by decisions of the State Courts, made after the bonds have been negotiated, unless, possibly, where the question exclusively depending upon the construction of local and peculiar provisions of the State Constitution or enactment of the State Legislature, or of the Municipal Bonds, Sec. 22.

This gives a summary of the doctrine of the Supreme Court of the United States.

I submit a few of the cases from which this doctrine is gathered:

Knox County v. Aspinwall, 21 How. 520; The Town of Columbia v. Evans, 3 Cent. Law Jour. 325; Dillon v. Municipal Corp. (second edition) sec. 419; Blaisell v. Jeffersonville, 34 How. 237; Mercer County v. Hackett, 1 Wall. 63; Van Hatten v. Madison City, 1 Wallace, 644; St. Joseph Township v. Rogers, 16 Wallace, 844; Moran v. Miami County, 2 Black, 722; Supervisors v. Schenk, 5 Wallace, 784; Humboldt Township v. Long, 3 Cent. Law Jour. 224; Marcy v. Township of Oswego, 3 Cent. Law Jour. 393; Society for Savings v. New London, 29 Cent. 174; Railroad Company v. Franklin, 15 Ind. 325; Commissioners v. Nichols, 14 Ohio (N. B.), 309.

The last three cases are State cases, but the others are from the U. S. Supreme Court.

Town of Venice v. Murdoch, 3 Cent. Law Jour. 322, decided at the October term of the Supreme Court of the U. S., in 1875, is important, because it overrules the judgment of the Court of Appeals of New York.

I might cite other cases, both State and Federal, and might particularize further as to the rules laid down in each case, but time admonishes me.

I conclude then, that if our outstanding bonds get into, or are now in the hands of innocent holders, for value, and they go to the Federal Courts for relief, (as they doubtless will do) the bonds will be adjudged valid against the city.

Something was said by the President of the Board about certain notices published by certain citizens, etc., but that could amount to nothing, unless it could be shown that such notices actually came to the party plaintiff before he purchased the security, even if it were a complete defense when that fact should be shown.

If the securities are now in such hands, that the City could interpose an equitable defense against them, they are not yet due, and they could and would doubtless be put into the hands of innocent holders for value, before maturity, and thus compel payment.

I am therefore of the opinion that payment of our outstanding bonds can be enforced through the Courts.

Respectfully submitted,

WILL M. GIBBETT,

City Attorney.

April 8th, 1881.

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## CITY BOND NOTICE.

### THE BOARD OF TRUSTEES OF

the City of San Diego, County of San Diego, State of California, having, at a regular session of said Board on the 31 day of September, 1881, passed a resolution that the bonded indebtedness of the City of San Diego as it existed on the first day of January, 1880, which is still outstanding, shall be refunded, up to and including Bond No. 145, at the option of the Board, as provided for in Section 4,445 of the Political Code of this State.

And said Board of Trustees having, at a subsequent meeting, further resolved to issue Bonds of the City of San Diego for said purpose, to the amount of Eighty Thousand Dollars, in sums of One thousand Dollars each, having twenty years to run from the first day of January, 1882, and redeemable before the expiration of that period, at the pleasure of the city, and bearing interest at the rate of seven per centum per annum, payable semi-annually on the first day of July and the first day of January in each year. Said Bonds to be in form and substance in accordance with, and to be issued by and under the provisions of Chapter Six of Title Three of Part Four of the Political Code of California.

The Treasurer of the City of San Diego being authorized and directed to advertise for bids for the purchase of said Bonds or the exchange for them of the now outstanding City Bonds.

Not a is hereby given that the undersigned will under the direction and subject to the approval of the Board of Trustees of said City, sell for gold coin, or exchange for legal Bonds of said City which were on standing on the first day of January, 1880, and which are still outstanding, up to and including Bond No. 145, with accrued interest, eighty thousand dollars in amount of said Bonds, each Bond dated January 1st, 1882, principal and interest payable in gold coin of the United States of America.

Said Bonds will be sold to the highest bidder, but in no case for a less sum than the face value of the Bonds, and all interest accrued on them at the date of such sale or exchange.

Sealed proposals for the purchase or exchange of any or all of said Bonds will be received by the undersigned at his office at the Consolidated Bank of San Diego, in the City of San Diego, County of San Diego, State of California, until 10 o'clock of January 25th, 1882. The right to reject any and all bids is reserved.

All proposals are to be directed to the Treasurer of the City of San Diego, and marked "Proposals for Bids for City Bonds."

BRYANT HOWARD,

Treasurer of the City of San Diego.

Dated at San Diego, Cal., December 23, 1881.

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are consid-  
the States of New York, Iowa, and others,  
have laid down and fol-owed one rule in such  
cases, while the State of Missouri lays down  
a different rule. These authorities are of like  
respectability and cannot be reconciled on  
principle.

So far as the Supreme Court of this State is  
concerned I find but little assistance toward a  
solution of the question. Our Court has pe-  
ticularly upheld its decision authorizing the is-  
sue of bonds by municipal corporations to  
aid in bonded corporations. (People vs. Board  
of Supervisors, 27th N.Y. 635.)

In the case of *McCoy vs. Bryant, et al.*,  
(100 N.Y. 345) our own Court held that  
some of these bonds were not a legal charge  
against the City, even in the hands of inno-  
cent holders; but the case is not well sus-  
tained by the authorities cited, and as the  
question was not a direct one for the col-  
lection of the bonds in the hands of an inno-  
cent holder for value, that decision is not  
very satisfactory as the rule of action of even  
our own Court. I submit that the case bears  
evidence that it was hastily decided, with-  
out any exhaustive consideration or dis-  
cussion of the question. It, too, violates  
some well considered case decided by the  
same Court touching the rights of innocent  
holders for value of negotiable instruments.  
But these bonds not maturing until 1903,  
and being negotiable, are liable to get into  
the hands of innocent holders residing out-  
side of our own State, who, if compelled to  
ask the aid of the Courts to enforce payment  
of their bonds, would probably apply to the  
Federal Courts for relief; and hence it be-  
lieves us to consider the rule adopted and  
which will probably be followed by those  
Courts in such an event.

In the Supreme Court of the United States  
the question is not new and the authorities  
are abundant and uniform.

The whole question is ably and carefully  
discussed in a late paper from the pen of  
Judge Dillon, entitled "The Law of Municipal  
Bonds," published in 1877, by G. L. Jones  
and Company, in a volume entitled "Mono-  
graphs."

While it might be entertaining and profit-  
able, from a general standpoint, to follow the  
history of the discussion of the questions at  
issue in the several cases that have been be-  
fore the Courts of the United States, yet if, in  
the present consideration, would seem more  
getting to at once go to "the conclusion of the  
whole matter" without so much labor.

In the work last cited, Judge Dillon, in  
Section 22, uses this language:

"We may observe that if we have not mis-  
taken the meaning and effect of the leading  
judgments of the Supreme Court (of the U.S.)  
which we have passed in review, they estab-  
lish the following principles: The purchaser  
is bound to see that there exists legislative  
authority, not in conflict with the State Con-  
stitution, for the issue of the bonds or com-  
mercial securities of the municipal, public or  
quasi corporation, and is bound to notice the  
contents and recitals contained in the instru-  
ments; but if such bonds are duly executed  
by the proper officers, and if these officers are  
invested by the true construction of the leg-  
islative enactment in that regard, with the  
power to decide whether conditions precedent  
have been performed, and the bonds con-  
tain a recital that such conditions have  
been complied with, or a recital which im-  
plies such compliance, whether the prelimi-  
nary conditions consist of facts or acts or  
facts of record, the issue of the bonds under  
such circumstances, with such a recital, is  
conclusive against the municipality as to the  
fact or facts recited or implied in the recital,  
and estops it, in an action by an innocent  
holder for value, before due, to show the con-  
trary. This is the doctrine of the Supreme  
Court of the United States, and the point in  
which it differs in the general line of deci-  
sions in the State Courts is in regard to the  
evidence of compliance with the conditions  
precedent. In all the cases in the Supreme  
Court of the United States, that tribunal has  
held that the municipal or local officers were  
constituted the judges to decide whether  
ancient or preliminary steps or conditions  
had been complied with, and that their deci-  
sion, stated or implied, in the recital was con-  
clusive against the corporate maker when  
the bonds have found their way into the  
hands of innocent holders. The view which  
holds the local officers a tribunal to make so  
important a decision rests not upon any ex-  
press declaration of the legislature to that  
effect, but is gathered by construction from  
the supposed intent and purpose of the legis-  
lature.

Many of the State Courts, but not all of  
them, have taken a somewhat different view.  
They agree that mere irregularities, not relat-  
ing to the exercise of the power, will not affect  
a bona fide holder; but inasmuch as there  
exists no general power to issue such securi-  
ties, and as the fact of compliance and non-  
compliance with condition precedent, is un-

CITY BOND NOTICES

SEPT. 9, 1881

DEC. 28 , 1881

DEC. 23, 1881

FEB. 28, 1882

FEB. 28, 1882