

Chapter 370

County Road Bonding Act

370.010

NOTES OF DECISIONS

The duty of selecting the type of road was a responsibility of the county court after the bond issue was voted. *Trippeer v. Couch*, (1924) 110 Or 446, 220 P 1012.

A decision of the county court to construct a macadam road was not reviewable on mandamus. *Id.*

Macadam highways were included in the term "permanent roads." *Id.*

An election authorizing issuance of bonds exceeding county's constitutional debt limit did not authorize issuance of bonds up to such limit. *Hansen v. Malheur County*, (1939) 160 Or 579, 86 P2d 964.

An injunction could be invoked by a resident taxpayer to prevent an unlawful county bond issue. *Id.*

A proposed bond issue for funds to be expended on road machinery and maintenance for use on roads not specified or described as permanent was not within the constitutional provision exempting bond issues for permanent roads from county's constitutional debt limit. *Id.*

FURTHER CITATIONS: *Peterson v. Lewis*, (1916) 78 Or 641, 645, 154 P 101; *Ladd and Tilton Bank v. Frawley*, (1920) 98 Or 241, 193 P 916; *First Nat. Bank v. Yamhill County Court*, (1924) 110 Or 74, 222 P 1077; *Walker v. Polk County*, (1924) 110 Or 535, 223 P 741; *Norton v. Coos County*, (1925) 113 Or 618, 621, 233 P 864; *Taylor v. Multnomah County*, (1926) 119 Or 123, 125, 248 P 167; *Coos County v. Oddy*, (1937) 156 Or 546, 68 P2d 1064.

ATTY. GEN. OPINIONS: Issuance of bonds for construction of bridges, 1920-22, p 504; implied repeal of this section, 1922-24, p 374; selection of type of roads to be constructed, 1922-24, p 653; issuance of bonds for expense of building bridges not entirely within county, 1922-24, p 400; definition of "permanent roads," 1922-24, p 653.

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NOTES OF DECISIONS

A stipulation in a road building contract that the state highway engineer's estimate as to work done, is, in the absence of bad faith, binding on both parties as to disputes. *Sweeney v. Jackson County*, (1919) 93 Or 96, 178 P 365, 182 P 380.

The Supreme Court cannot compel the county court to determine a matter as to construction of a road other than according to the judgment of the county court. *Trippeer v. Couch*, (1924) 110 Or 446, 220 P 1012.

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NOTES OF DECISIONS

A jurisdictionally defective petition cannot be cured by the declaration of the county court provided for in ORS 370.130. *Elliott v. Tillamook County*, (1917) 86 Or 427, 168 P 77.

It is the mandatory duty of the county court to call a

special election whenever the required number of voters petition. *Norton v. Coos County* (1925) 113 Or 618, 233 P 864.

FURTHER CITATIONS: *Wilson v. Wasco County*, (1917) 83 Or 147, 150, 163 P 317.

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NOTES OF DECISIONS

A petition for the issuance of bonds in a given sum to run for 20 years and bear interest at eight percent per annum, to be redeemed one-tenth annually, beginning at the end of the 10th year was sufficient. *Clark v. Hood River County*, (1914) 73 Or 336, 143 P 897.

A statement in the petition that bonds are "to run not to exceed 20 years" is not a substantial compliance with this section. *Elliott v. Tillamook County*, (1917) 86 Or 427, 168 P 77.

A county court's finding that a petition substantially conforms with the requirements of this section is not conclusive. *Id.*

FURTHER CITATIONS: *Wilson v. Wasco County*, (1917) 83 Or 147, 150, 163 P 317; *Norton v. Coos County*, (1925) 113 Or 618, 621, 233 P 864.

ATTY. GEN. OPINIONS: Requirements for petition under this section, 1920-22, p 524.

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NOTES OF DECISIONS

Burden of showing insufficient description of a road in an order for bond election rests on the taxpayers seeking to enjoin the sale of bonds. *Walker v. Polk County*, (1924) 110 Or 535, 223 P 741.

An order describing the termini between which was a road already established and in public use, and which only answered to the description, was sufficient. *Id.*

Where order recited that proposed bonds should bear interest at a rate not to exceed six percent per annum, it was sufficient. *Id.*

ATTY. GEN. OPINIONS: Borrowing of money received from sale of bonds for use in construction of certain road and expending same in the construction of another road, 1920-22, p 90; diversion of money voted to be used on a particular road or section of road for expenditure on another road or section, 1922-24, pp 72, 291, 441; transfer of proceeds from sale of road bonds to general fund for redeeming or canceling general fund and road fund warrants, 1922-24, p 112; use of funds voted to construct a bridge at a certain point, for construction of bridge at another point, 1928-30, p 277.

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CASE CITATIONS: *Wilson v. Wasco County*, (1917) 83

Or 147, 150, 163 P 317; Norton v. Coos County, (1925) 113 Or 618, 621, 233 P 864; Coos County v. Oddy, (1937) 156 Or 546, 68 P2d 1064.

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NOTES OF DECISIONS

A notice of election should observe the mandatory legal provisions, otherwise the election and the action authorized thereby are void. Hansen v. Malheur County, (1939) 160 Or 579, 86 P2d 964.

The requirement that the purpose of the proposed bond issue be stated in the notice of election should be complied with. *Id.*

The purpose of election is sufficiently stated where there is incorporated in the notice a complete copy of the initial resolution which contains a statement of the purpose of the bond issue. *Id.*

The amount of bonds proposed to be issued should be particularly specified in the notice of election. *Id.*

Where the initial point of a road was designated as the eastern instead of the western end of an existing road, but otherwise it was described so that its identity was unmistakable, the proceedings were not vitiated. Parker v. Clatsop County, (1914) 69 Or 62, 138 P 239.

The failure strictly to post or publish notices required by this section did not invalidate an election unless it was affirmatively shown that a different result would have ensued if the statute had been strictly observed. Hansen v. Malheur County, (1939) 160 Or 579, 86 P2d 964.

FURTHER CITATIONS: Norton v. Coos County, (1925) 113 Or 618, 233 P 864.

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NOTES OF DECISIONS

"Year" means calendar year. Norton v. Coos County, (1925) 113 Or 618, 233 P 864.

A road bond election though held on the same day as a general election was nevertheless a "special election," and a subsequent special election during the same year was void. *Id.*

A special election was regular and valid. Taylor v. Multnomah County, (1926) 119 Or 123, 248 P 167.

A special election following within one year an election authorizing bonds to discharge certain warrants and interest was not invalid. Driscoll v. Klamath County, (1927) 122 Or 515, 259 P 915.

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NOTES OF DECISIONS

A primary nominating election is a general election within the meaning of this section. Taylor v. Multnomah County, (1926) 119 Or 123, 248 P 167; Hansen v. Malheur County, (1939) 160 Or 579, 86 P2d 964.

This section was not applicable to an election for the issuance of refunding bonds to retire warrants for permanent road construction. Coos County v. Oddy, (1937) 156 Or 546, 68 P2d 1064.

FURTHER CITATIONS: Wilson v. Wasco County, (1917) 83 Or 147, 151, 163 P 317; Norton v. Coos County, (1925) 113 Or 618, 621, 233 P 864; Fales v. Multnomah County, (1926) 119 Or 127, 248 P 151.

ATTY. GEN. OPINIONS: Distinction between "special election" and "general election" as used in this section, 1950-52, p 362.

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NOTES OF DECISIONS

1. In general

A majority of those voters voting on the issuance of bonds, and not a majority of voters voting at the election, determines whether such bonds shall be issued. Wilson v. Wasco County, (1917) 83 Or 147, 163 P 317.

2. Effect of order

Mere irregularities are cured by the order of the court declaring the result of the election. Clark v. Hood River County, (1914) 73 Or 336, 143 P 897; Elliott v. Tillamook County, (1917) 86 Or 427, 168 P 77; Hansen v. Malheur County, (1939) 160 Or 579, 86 P2d 964.

An entire lack of description of the road renders the proceedings void in spite of this section. Clark v. Hood River County, (1914) 73 Or 336, 143 P 897.

The authority of the court depends upon whether a majority of the voters actually voted for the measure; the order does not foreclose an investigation into the election. Wilson v. Wasco County, (1917) 83 Or 147, 163 P 317.

This section is invalid in so far as it attempts to cure a jurisdictionally defective petition. Elliott v. Tillamook County, (1917) 86 Or 427, 168 P 77.

An order is not absolutely conclusive of the regularity of all the proceedings in reference to the matter. Hansen v. Malheur County, (1939) 160 Or 579, 86 P2d 964.

FURTHER CITATIONS: Parker v. Clatsop County, (1914) 69 Or 62, 138 P 239; Hawley v. Anderson, (1921) 99 Or 191, 193, 190 P 1097, 195 P 358; Norton v. Coos County, (1925) 113 Or 618, 233 P 864.

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ATTY. GEN. OPINIONS: Amount of bonds issuable in one year, 1920-22, p 69; agreement entered into for sale of road bonds prior to proper advertising of same and public openings of bids as not enforceable, 1920-22, p 446.

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NOTES OF DECISIONS

In construing this section, the whole County Road Bonding Act is to be considered to determine legislative intent. Fales v. Multnomah County, (1926) 119 Or 127, 248 P 151.

The legislature can vest authority in the county officials to issue road bonds serially after notice of election authorizing them had announced maturity in 30 years. *Id.*

Bonds may be redeemed in equal amounts on certain day each year beginning six years after issuance, though notice of election authorizing them announced maturity in 30 years. *Id.*

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ATTY. GEN. OPINIONS: Investment of funds derived from taxes to obtain sinking fund to retire county road bonds, 1922-24, p 63; property within county upon which taxes are to be levied for the redemption or payment of interest on bonds, 1924-26, p 581.

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NOTES OF DECISIONS

The levy of a tax is mandatory under this section. First Nat. Bank v. County Court, (1924) 110 Or 74, 222 P 1077.

Where interest was paid out of general funds, the proceeds from levies under this section could not be used for payment on the bonds during the next year where the

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amount thereof was ordered returned to the general fund by the levying board. Id.

Bonds could be redeemed in equal amounts on certain day each year beginning six years after issuance, though notice of election authorizing them announced maturity in 30 years. *Fales v. Multnomah County*, (1926) 119 Or 127, 248 P 151.

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ATTY. GEN. OPINIONS: Issuance of warrants in lieu of bonds without submitting question to people, 1920-22, p 69.

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ATTY. GEN. OPINIONS: Transferring surplus to general road fund, 1952-54, p 11.