

OFFICE OF ATTORNEY GENERAL  
FOR THE  
Territory of Arizona.  
PHENIX. TUCSON.

FRANCIS J. HENEY,  
ATTORNEY GENERAL.

Tucson, Arizona, February 6, 1894.

Hon. L. C. Hughes,  
Governor of Arizona,  
Phoenix, Arizona.

Dear Sir:-

On December 31st, 1893, I received from the Secretary of the Loan Commission a communication requesting my opinion as to the legality of all certificates of indebtedness now outstanding which have been issued against the Territory subsequent to the 31st day of December, 1890. In reply thereto I beg leave to submit the following:

The act of Congress approved June 25, 1890 entitled "An Act Approving with amendments, the Funding Act of Arizona" in section 15 of said act provides "that nothing in this act shall be construed to authorize any future increase of any indebtedness in excess of the limit prescribed by the Harrison Act: provided, however, that the present existing and outstanding indebtedness, together with such warrants as may be issued for the necessary and current expenses of carrying on Territorial, County, Municipal, and School government for the year ending December 31st., 1890, may also be funded and bonds issued for the redemption thereof; and thereafter no warrants, certificates, or other evidences of indebtedness shall be allowed to issue or be legal where the same is in excess of the limit prescribed by the Harrison Act."

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The funding act in question does not pretend to be a limitation upon the power of the Territory the county, or the municipality to create indebtedness to any further extent than to reassert and reenact the Harrison Act and to give further force and effect to that act, if possible, by declaring that after December 31st., 1890, "No warrants, certificates or other evidences of indebtedness shall be allowed to issue or be legal where the same is in excess of the limit prescribed by the Harrison Act." It thus becomes necessary to examine the Harrison Act and from it alone to determine the limit placed upon the power of the Territory to create indebtedness and to issue warrants, certificates or other evidences thereof, in order to answer the question asked by the Commission.

The only limitation placed upon the power of the Territory, by said Harrison Act, to create indebtedness is as follows, to wit: "Sec.3, That no law of any Territorial Legislature shall authorize any debt to be contracted by or on behalf of such Territory except in the following cases: To meet a casual deficit in the revenues, to pay the interest upon the Territorial debt, to suppress insurrections, or to provide for the public defense, except that in addition to any indebtedness created for such purposes, the Legislature may authorize a loan for the erection of penal, <sup>and educational</sup> charitable institutions for such Territory, if the total indebtedness of the Territory is not hereby made to exceed one per centum upon the assessed value of the taxable

property in such Territory as shown by the last general assessment for taxation."

As a matter of fact the Territory has long since become indebted largely in excess of one per cent of the assessed value of the taxable property in the Territory, and therefore, it is plain that the only purposes for which a law may be passed by any Territorial Legislature authorizing any debt to be contracted by or on behalf of this Territory are such debts as may become necessary to meet an accidental deficit in the revenues, such as might arise from a large proportion of taxes going delinquent or from a mistake in estimating the amount of funds necessary to carry on the current and necessary expenses of the Territory, or such debts as it may become necessary to incur in order to raise the money wherewith to pay the interest upon the present Territorial debt, or such debts as it may be necessary to incur to suppress insurrections or to provide for the public defense. Such indebtedness as I have just last enumerated the Legislature of the Territory has full power to authorize the Territory to contract.

The next question to determine, therefore, is, has the Legislature authorized the Territory to create indebtedness which may arise from a casual deficit in the revenues, or to pay the interest on the Territorial indebtedness or to suppress insurrections or provide for the public defense. This question is easily answered.

Revised Statutes of Arizona, Sec.2966, provides that "In all cases of claims audited and allowed against the Territory, and in all cases of grants, salaries, pay and expenses allowed by law, the auditor shall draw a warrant on the Treasury for the amount due, in the form required by law; provided, an appropriation has been previously made for such purpose, and every warrant so drawn shall be countersigned by the Governor or Secretary of the Territory." Sec.2967, provides, "No warrant shall be drawn by the Auditor or paid by the Treasurer, unless the money has been previously appropriated by law; nor shall the whole amount drawn for or paid under one head, ever exceed the amount appropriated by law for that purpose." Sec.2968, provides, "In all cases where the law recognizes a claim for money against the Territory, but no appropriation shall have been made by law to pay the same, the Auditor shall audit and adjust the same, if presented to him, and give the claimant a certificate of the amount thereof, under his official seal, if demanded, and shall report the same to the Legislative Assembly, with as little delay as possible."

Under the provisions just cited it is apparent that the Legislature has by law authorized the Territory to create indebtedness, i.e. to go into debt, for current expenses, always, however, within the limit of the appropriations made for such purposes by the Legislature. The Auditor is authorized to issue his warrant for the same as an evidence of the indebtedness, and the Treasurer is required to

Stamp said warrant upon its being presented for payment, and it bears interest from that day until paid. In order to determine, therefore, whether any of the warrants or certificates of indebtedness now being issued by the Auditor are legal or not, it is necessary to examine the appropriation act for 1893 as well as the levy for taxes or assessment made by the Territorial Board of Equalization for the year 1893, and thus determine three questions.

First. Has the Legislature appropriated money for any purpose in excess of the limit placed upon its power by the Harrison Act?

Second. Is the amount of the warrant in question added to that of all other warrants issued for the same purpose during said year in excess of the amount appropriated by the legislature for that particular purpose?

Third. Does the total amount of warrants already issued during this year exceed the total amount of revenues for the raising of which the Territorial Board of Equalization provided by its assessment?

The first question is a little difficult to answer even after the most careful examination of the appropriation act. At least two items in that act are somewhat doubtful, to wit, the amount of seventy <sup>thousand</sup> five dollars appropriated for repairs on the Insane Asylum and the amount of five thousand dollars appropriated to build a dormitory at the University. Clearly the legislature has no power to authorize

the issuing of a warrant to cover either of these appropriations unless there is money in the Territorial Treasury with which to pay said warrants at the time they are issued. Otherwise the legislature would thus be authorizing the creating of an indebtedness to repair charitable institutions contrary to the spirit of the Harrison Act. Still, if the Board of Equalization has provided for the raising of sufficient revenues to pay all the appropriations made by the legislature, including the two last mentioned, and if it becomes necessary to issue warrants to cover these two appropriations solely because there is an accidental deficit in the revenues caused by a large delinquent list or any other unexpected cause, then valid warrants could be issued to pay said appropriations even when there was not sufficient money in the treasury with which to pay them.

The second question is easily answered, and it is the duty of the Auditor to make sure that said law is not violated.

The third question can also be easily answered by the Auditor. The total amount of revenue for the raising of which the Board of Equalization has provided is easily ascertainable. If the total amount of appropriations made by the legislature, and which are to be paid out of these revenues during the year 1893, is in excess of said total amount of revenues so provided to be raised, then all warrants issued in said year 1893 to meet said appropriations are invalid which are drawn and issued after the full amount of warrants

previously issued equals the full amount of revenues so provided to be raised. This seems clear to my mind for the reason that such warrants are not issued to meet an accidental or casual deficit in the revenues, but, on the contrary, they are issued to meet a manifestly inevitable deficit in said revenues. The Harrison Act, it seems to me, was passed for the very purpose of preventing the legislature from making appropriations largely in excess of the amount of revenues for the raising of which it had provided by law. With the maximum rate of taxation for Territorial purposes fixed at thirty five cents on the hundred, upon an assessed valuation of twenty eight million dollars for the preceding year, and with the almost certain prospect of at least fifteen per cent of the taxes going delinquent, it must have been apparent to both the Governor and the Legislature that the expenses of government for the year 1893 must be kept within the limit of eighty five thousand dollars, if the Territory was to be run upon a cash basis. Yet the appropriation bill for 1893 provides for the expenditure of nearly forty five thousand dollars during that year in addition to the cost of maintaining the Territorial Prison and the Insane Asylum. These two institutions as at present economically managed will cost the Territory not less than seventy five thousand dollars per year; thus leaving but ten thousand dollars of probable revenues with which to meet appropriations amounting to forty-five thousand dollars. It must be plain to the most ordinary business mind

Hon!L.C.#.8.

that the Territory cannot be run upon a cash basis unless its revenues from taxation at least equal the appropriations made by the legislature for specific objects, plus the cost of maintaining our Territorial Institutions which are not cared for by a special tax.

There are two ways to remedy the present evil so as to avoid violating the Harrison Act in the future, to wit,

First. The Legislature can pass a law removing the limitation upon the power of the Board of Equalization to fix the rate of taxation for Territorial purposes, and permit it to make the levy at such rate as in its judgment will produce a sufficient amount of revenues with which to pay all the necessary and current expenses of the government (including all appropriations under the head of "necessary").

Second. The legislature must cease to make such generous appropriations, or it must provide for the raising of revenues by a special tax to maintain our Territorial Prison and Insane Asylum.

In order to reach a cash basis as easily as possible, I advise that Congress be petitioned to extend the terms of the funding act so as to permit the funding of all warrants issued for necessary and current expenses up to December 31st, 1895. This will enable the Governor in conjunction with the Legislature, at its next session, to arrange for the raising of sufficient revenues by taxation with which to run the Territory on a cash basis in the future.

Yours respectfully,

*Francis J. Healey*  
Attorney-General of Arizona.

Office of the Attorney-General.

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revenues to pay all the appropriations made by the legislature, including the two last mentioned, and if it becomes necessary to issue warrants to cover these two appropriations solely because there is an accidental deficit in the revenues caused by a large delinquent list or any other unexpected cause, then valid warrants could be issued to pay said appropriations even when there was not sufficient money in the treasury with which to pay them.

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There are two ways to remedy the present evil so as to avoid violating the Harrison Act in the future, to wit;

First. The legislature can pass a law removing the limitation upon the power of the Board of Equalization to fix the rate of taxation for Territorial purposes, and permit it to make the levy at such rate as in its judgment will produce a sufficient amount of revenues with which to pay all the necessary and current expenses of the government (including all appropriations under the head of "Necessary").

Second. The legislature must cease to make such generous appropriations, or it must provide for the raising of revenues by a special tax to maintain our Territorial Prison and Insane Asylum.

In order to reach a cash basis as easily as possible, I advise that Congress be petitioned to extend the terms of the funding act so as to permit the funding of all warrants issued for necessary and current expenses up to December 31, 1898. This will enable the Governor in conjunction with the Legislature, at its next session, to arrange for the raising of sufficient revenues by taxation with which to run the Territory on a cash basis in the future.

Yours respectfully,

Francis J. Honey,

Attorney-General of Arizona.

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Francis J. Henry  
Opinion  
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standing certificates  
issued previous to  
Dec. 31 - 1890.

Board of equalization must cease to make such general provisions for the raising of revenue by a law which shall extend the term of the funding certificates to be issued for necessary expenses up to December 31, 1895. This will enable the government in conjunction with the legislature, at its next session, to extend for the raising of sufficient revenue by taxation with which to run the territory on a cash basis in the future.

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