Municipal Finance

Charles Hamilton McKnight
Cornell Law School

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MUNICIPAL FINANCE.

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CHARLES H. McKNIGHT.

Cornell University Law School.
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AUTHORITIES.

Woolsey's Political Science.


Dillon's Municipal Corporations.

Story's Commentaries.

Ford's Functions of Governments.

State and Local Government of New York. (Anon.)

Dillon's Municipal Bonds.


Sterne's Defective and Corrupt Legislation.

Cooley on Taxation.

Burroughs on Taxation.

Papers on Municipal Governments by Andrew D. White and Clayton C. Hall.

Numerous Cases bearing on the subject and cited in the text.
INTRODUCTION.

During the past twenty years there has been witnessed an enormous increase in the amount of municipal indebtedness in the United States. The following figures will show the tremendous rapidity with which municipal governments in this country roll up debts. The aggregate amount, including under this head city, county, township and school indebtedness, increased, according to the United States Census Report, as follows:

Aggregate amount in 1870 ---- $ 515,810,060.00

,, ,, ,, 1880 ---- 821,486,440.00

,, ,, ,, 1890 ---- 1,550,000,000.00

A large increase in indebtedness of this class was to be anticipated, as the natural and perfectly legitimate result
of the rapid growth of cities and towns, their no less rapid
growth in wealth and the necessary expenditures involved in
improvements of a character commensurate with the increasing
importance of the community. An increase of municipal in-
debtedness in a growing and developing county is both natural
and proper, but the facility with which appropriations of pub-
lic money and public credit can be voted by irresponsible,par-
tisan and unscrupulous Boards of Aldermen and Common Councils,
leaves open a wide door to extravagance, abuse of trust and
consequently to a heavy increase in the now already too bur-
densome burdens of local taxation, and it is with this great
and growing evil of taking the people's money, to be squander-
ed by "rings" and boards, under the disguise of lawful taxa-
tion, that Municipal Finance becomes one of the living ques-
tions of the day.
MUNICIPAL FINANCE.

Power to Create Indebtedness.

As the Federal Government does not undertake to administer matters that concern a single State, so within the State there exist a number of local governments, exercising control over local affairs which pertain to a limited extent of territory. These governments are concerned with the regulation of political divisions of the State for convenience of government. The functions of a local government are in contradistinction with State or legislative powers, almost wholly of an administrative nature and consist essentially in superintending the collection of taxes and regulating expenditure. Moreover, all the power possessed by such governments is granted and conferred upon them by the State government, and that,
too, by express statutes. The county and township are recognized by the Constitution of the State of New York and other States as regular subdivisions of the State for the purposes of government, and cannot be extinguished. But as all grant of power is derived from the State, and may be altered or modified as the State wishes, the State may withdraw all the powers of government they possess, and, through its Legislature or other appointed channels, govern the local territory as it governs the State at large. It is on this account that it is proper to consider municipal governments not as separate and distinct governments, but as creatures of the State governments, from which they derive all power and authority, whatsoever.

A municipal corporation is established by law to share in the civil government of the county, but chiefly to regu-
late and administer the local or internal affairs of the city which is incorporated. Such government has been appropriately described as "an investing the people of a place with the local government thereof." These governments derive all their powers from the State Legislature, and these powers are defined in articles of incorporation or charter issued by the State to the people of a particular community. These powers are not vested rights, but wholly political, continuing at the will of the State. It is a peculiar fact of Municipal History that no city government existed in Massachusetts until Boston was incorporated in 1821.

A city having obtained its charter from the State, accrues to itself certain functions. "Primarily", Judge Cooley says, "the duties of municipal corporations are public, and their powers governmental. They are created for convenience,
expediency and economy in government, and, in their public capacity, are and must be at all times subject to the control of the State which has imparted to them life, and may at any time deprive them of it. But they have or may have another side, in respect to which the control is in reason, at least, not so extensive. They may be endowed with peculiar powers and capacities for the benefit and convenience of their own citizens, and in the exercise of which they seem not to differ in any substantial degree from the private corporations which the State charters. It may not be possible to draw the exact line between the two, but provisions for local conveniences for the citizens, like water, light, public grounds for recreation, and the like, are manifestly matters which are not provided for by municipal corporations in their political or governmental capacity, but in that quasi private ca-
pacity in which they act for the benefit of their corpora-
tors exclusively." Thus the administration of justice and
the preservation of the peace are matters of public concern.
But to provide for systems of drainage, ventilation, cleanliness, and locomotion; to carry out police regulations, the prevention of fires, to create parks and pave streets, are more matters of business and finance than statesmanship. To effectively carry on any government there must necessarily be a source of revenue, so, in the instrument creating a city, provision is made by grant of the Legislature for a system of taxation, assessment and contraction of debt or loaning credit. Funds are generally raised by direct taxation, or bor-
row ing and issuing bonds for the payment thereof.
Legislation on the Subject.

The reckless incurring of debt in some instances by municipal bodies and subsequent repudiation in whole or in part, either directly or by an arbitrary reduction or readjustment of the rate of interest, has led to the establishment in most of the States of constitutional or statutory limitations upon the power of municipalities to borrow money or create indebtedness. In many of the States municipal corporations have been absolutely prohibited from lending either their money or their credit to works of internal improvement, such as railroad enterprises, and in a larger number a limit has been placed to the amount of indebtedness which such corporations shall be permitted to incur for any purposes, however legitimate they may be. In New York, for cities having a population of 100,000 and over, this limit has been placed at ten
per cent. of the taxable basis; in Indiana, at two per cent.; in Colorado, at three per cent.; in Illinois, Iowa, Maine, Missouri, West Virginia and Wisconsin, at five per cent.; in Georgia and Pennsylvania, at seven per cent.

Taxation.

The primary object of government is to protect the life and property of its subjects; and all the functions of government are intended to be used for attaining this object. Government is instituted to give that protection to life and property which could not be obtained so efficiently by any other means; and the whole powers of government are directed to this end. Although government guarantees to the citizen the protection of his property, the right of property is not inviolate; for the public welfare may demand the destruc-
tion or seizure of private property. In a conflagration buildings may be purposely demolished with explosives, in order to check the progress of the fire. And even in the ordinary course of events private property may be devoted to public uses, but in such cases the constitutional provision, that just compensation must be made to the owner, must be recognized. Moreover, such property must be taken for public uses only, for there is no power given to any branch of the government to enact laws for taking property from one private individual and bestowing it upon another. Such a power would be subversive of all rights of property. When private property is required for public ends there are two methods of taking it: First, by taxation; and, secondly, by the right of eminent domain, which latter, however, will not be treated upon.
As with the State so with municipal governments, in the matter of providing funds, they exercise no more potent instrument for good or evil than the power to tax subjects. Viewed by itself, a tax is a portion of a man's savings that is taken from him under form of law; it is a deprivation. In return the citizen receives protection to his person and property. Ordinarily the citizen has equivalent return for his money. It follows, therefore, that every tax should be jealously scrutinized in order to see that an equivalent service is rendered. Capital should not be needlessly taken in the form of taxes from the pockets of the people, where it would increase and fructify, to be wasted by government in unnecessary or unprofitable expenditures. As government exists to further the public or general interests, taxation should be applied for those public purposes only which form
the proper functions of the government. A State cannot levy
taxes to raise money to loan to persons who have suffered from
a fire or a public calamity; or to supply farmers whose crops
have been destroyed with provisions; or to relieve sufferers
from the devastations of a flood. Taxation is a mode of rais-
ing revenue for public purposes. When it is prostituted to
objects in no way connected with the public interest or wel-
fare, it ceases to be taxation and becomes plunder. Trans-
ferring money from the owners of it into the possession of
those who have no title to it, though it be done under the
name and form of tax, is unconstitutional and unwarranted.
No government has any right to raise a greater revenue than
it requires, and the people should jealously guard against the
undertaking of any enterprises of doubtful expediency which
will increase the burdens of taxation. The first of Adam
Smith's Canons of Taxation should always prevail, i.e. taxation should be equal; by which is meant that the subjects should contribute toward the support of the government, as nearly as possible, in proportion to their respective abilities. Although each State has its own system of taxation yet all agree in that they depend almost wholly on direct taxation, i.e. taxes on land and personal property for their revenues. Taxes on commodities are not levied by the State, but many different imposts are used, such as taxes on capital, license taxes and poll taxes. Not only are needs of the State government to be met, but each of the minor political divisions,—the counties, townships and municipalities,—must provide for the expenditure incurred while fulfilling the functions which properly belong to them. Thus the State must provide for the payment of public officers, for public charities,
lunatic asylums, grants to schools, prisons, etc.; the county sustains a prison and must provide for the costs of trials, and for the opening of roads and highways; while the cities have a large number of expenses which require a large revenue. All of these different revenues are collected under State laws but the collection itself is a local concern.

Collection of Taxes.

The machinery for determining the taxable property in a locality is also a local concern. It would be unreasonable to entrust to the State authorities a duty that requires, above all, an accurate knowledge of persons and property in a locality. The townships and cities elect assessors whose duty it is to determine, under forms of law, the taxable property which each person in the township or city may possess and
the sum of all estates. This is for the purpose of determining what amount of taxation each propertyholder shall pay, the tax being proportioned to the value of his property. It is at once evident that it is useless to expect any uniform system of valuing property by these local authorities. In the first place, they must depend almost entirely upon the statements of the property owners, who are selfishly interested in keeping their taxes at the lowest possible point, and to do it will resort to most anything that will tend to conceal the true value or escape entirely. This fraudulent spirit,—this bravado to get the best of municipal government, is particularly noticeable when it is attempted to raise revenue by taxing personal property,—e.g. stocks, bonds, mortgages and other securities. No assessor can discover this kind of property and hence it escapes taxation. In some instances
in New York the valuation of real estate for taxation was at one time reported as low as twenty per cent. of its real value. The period for the valuation of property for the purposes of taxation is determined by the legislatures. In the valuation of personal property, the value of which economists consider should be at least equal to that of real property, the widest range exists. Even under the best system it is estimated that at least one third escapes all taxation. Much of the personal property which it may be desirable, and under the present system is made obligatory on the assessors to assess, is invisible and incorporeal; easy of transfer and concealment; not admitting of valuation by comparison with any common standard, and the determination of the situs of which constitutes one of the oldest and most controverted questions of law. (Report of the New York State Commission.) Local
taxation in this country has been made the subject of much ex-
amination by commissions and legislation, but it is still far
from being placed on a satisfactory basis. In 15 Wallace,
p. 324, it was decided that public securities have a *situs*
where found, and are taxable only there. The systems of lo-
cal taxation are far from satisfactory, and the questions pre-
sented are difficult to solve. It has been held that prop-
erty not in existence or not in the State at the time the as-
sessment is taken cannot be taxed for the year. (Shaw v. Den-
nis, 10 Ill. 505; People v. Kohe, 40 Cal. 127; Wangler v.
Black Hawk Co., 56 Iowa, 384; Colbert v. Supervisors of Lake,
60 Miss. 142.) An additional assessment for personalty dis-
covered after the tax warrant had been issued is not a new

Legislatures should in no way interfere with local or
This can be the only true rule. The people of the locality are the best judges. All should have equal voice and equal interest in the assessing and collecting of taxes, as extravagance and wastefulness are more apt to be more carefully guarded against than where expenditure is incurred and taxes imposed by a small body. In a city where but a small proportion of the inhabitants are direct taxpayers and where all are given an equal voice in determining the city expenditures, it is natural that corruption should prevail in the expenditure of large funds. The evil is not in the mode of raising revenue, but in the administration of moneys in the hands of politicians, bosses and rings. It is argued that those who do not pay taxes, and who always form the larger party, will have no interest in keeping down expense; no matter into what extravagance they enter, they do not suffer and
they bear no share in the burdens entailed. For this reason it is proposed and has been adopted that the suffrage in cities upon questions of finance be limited to those who are possessed of sufficient property to have a real interest in the management of city expenditure, which has such an influence on taxation. In some States the constitutions place limits on the power of taxing for municipal purposes, but a more radical measure is needed to check the increasing wastefulness of city expenditure. In the matter of raising revenue by taxation the popular will of the electorate of the municipal corporation should prevail. The people do not revel in the waste of money. It is the ring in power who with greed watch for opportunity to swindle the honest taxpayers. The people should be allowed to vote upon all matters of public improvement. They are the judges. Good streets and buildings,
life and health are what the people are looking for, irrespective of the question of property owners.

Municipal taxpayers are divided into two classes,—direct and indirect taxpayers. Direct taxpayers are those who own real property and pay taxes for the privilege. Indirect taxpayers are those in the great majority who rent and consume, and the rate with which they pay for rent and consumption depends upon how much the property owner or direct taxpayer has to pay for the privilege of holding his property in that municipality. As all consumers are therefore taxpayers, the common opinion, that the community is divided into a taxpaying and a non-taxpaying class, rests on error, and is responsible for much disastrous misapprehension on the part of the poorer classes as to their real interests in questions of public expenditure. The non-taxpaying class must be educated to a
realization of their own importance as a factor in the great
questions of municipal finance. If the poorer classes want
recreation grounds and more perfect protection, and are will-
ing to pay increase of rents for the privilege, it is their
right to vote upon the questions, and not the exclusive right
of the direct taxpayers to decide them alone. The fraud
comes in the administration of the funds thus voted for pub-
lic improvements and here the remedy should be applied. The
cities of this country, as a rule, are to-day being annually
swindled out of thousands and hundreds of thousands of dol-
lars which were honestly voted for public uses. Everything
is looked after but the city's welfare, while mayors, alder-
men and commissioners are bought and sold to the highest bid-
der.

The financial chaos which has paralyzed city governments
throughout the country through maladministration has increased the alarm of the taxpayers who have been supporting political families, until the movement for the Federal plan of government of cities finds favor with the substantial citizens of the country. This reform is, of course, vigorously opposed by the politicians, and the greatest menace to the success of the plan lies in the fact that the people will have to depend on the politicians for its adoption. If the moneys voted by the people for municipal purposes were directly and honestly used for the objects intended, the municipal indebtedness of the country would show a remarkable shrinkage. How to get the handling of revenue out of the clutches of the dishonest officials is the great and living municipal question of the day. It is upon this point that legislation is needed. The people of a locality are the best judges of what is needed in
way of expenditure. When such funds are collected the State should assume control of the same, to be paid out only on order of a non-partisan commission of the municipal corporation which raised the funds, to be appointed by the governor of the State. Such commissioners should be under bonds for faithful performance of duty and compelled to publish reports of all orders paid. This would take money out of control of irresponsible mayors and boards of aldermen who league themselves with contractors, rings and monied corporations.

Source of Revenue.

A city government does not possess the power to create corporations. But it has the power to grant to corporations formed under State laws many valuable privileges. Thus it may permit a corporation to lay down, under the streets of
the city, gas mains to light the streets and houses and to charge for such light; and the same with steam pipes and electric wires; to erect poles for telegraph and electric-lighting wires in the streets, etc. All of these franchises are in their nature valuable to the corporations, and it would naturally be supposed that some reciprocal benefit should be required of those to whom they have been granted. But as a typical example, in the city of New York such privileges have been voted away for nothing or for a mere nominal return, and the grants have been so made as to redound more to the private interests of the boards of aldermen than to the interests of the community. The privileges granted to lighting companies are extremely valuable, for the reason that the plants required are costly, competition is not active and the companies charge what they please. Yet cities receive no financial
benefit from these corporations in return for privileges granted. The city of Paris, France, derives a handsome revenue from the gas company. In some cases a certain percentage of the net profits of a corporation may be reserved to the city.

Character of Charters.

In securing local or municipal government the exercise of certain granted powers calls for the expenditure of large sums of money and also bring in revenue to the municipal treasury. A general idea of the powers and functions contained in a city charter can be obtained by the provisions of the New York City Charter, which demonstrates clearly that the functions of a city government are of a ministerial and administrative character:

"To regulate traffic and sales in the streets, highways,
roads, and public places; to regulate the use of streets, highways, roads, and public places by foot passengers, vehicles, railways, and locomotives; to regulate the use of sidewalks, building-fronts, and house-fronts within the stoop lines; to prevent and remove encroachments upon and obstructions to the streets, highways, roads, and public places; to regulate the opening of street surfaces, the laying of gas or water mains, the building and repairing of sewers, and erecting gas-lights; to regulate the numbering of the houses and lots in the streets and avenues, and the naming of the streets, avenues, and public places; to regulate and prevent the throwing or depositing of ashes, offal, dirt, or garbage in the streets; to regulate the cleaning of the streets, sidewalks, and gutters, and removing ice, hail, and snow from them; to regulate the use of the streets and sidewalks for signs, sign-
posts, awnings, awning-posts, and horse-troughs; to provide for and regulate street pavements, cross-walks, curb-stones, gutter-stones and sidewalks; to regulate public cries, advertising noises, and ringing bells in the streets; in regard to the relation between all the officers and employes of the corporation, in respect to each other, the corporation and the people; in relation to street beggars, vagrants, and mendicants; in relation to the use of guns, pistols, firearms, fire-crackers, fireworks, and detonating works of all descriptions within the city; in relation to intoxication, fighting and quarrelling in the streets; in relation to places of amusement; in relation to exhibiting or carrying banners, placards, or flags in or across the streets or from houses; in relation to the exhibition of advertisements or hand-bills along the streets; in relation to the construc-
tion, repairs, and use of vaults, cisterns, areas, hydrants, pumps, and sewers; in relation to partition fences and walls; in relation to the construction, repair, care, and use of markets; in relation to the licensing and business of public cartmen, truckmen, hackmen, cabmen, expressmen, boatmen, pawnbrokers, junk dealers, hawkers, peddlars, and vendors; in relation to the inspection, weighing, and measuring of fire-wood, coal, hay and straw, and the cartage of the same; in relation to the mode and manner of suing for, collecting, and disposing of the penalties provided for a violation of all ordinances; and for carrying into effect and enforcing any of the powers, privileges, and rights at any time granted and bestowed upon or possessed by the said corporation."
Municipal Securities for Debt.

The policy of burdening the future has been sanctioned by the legislature, and the courts have to deal with the legal rights of the municipality on the one hand and the holders of its obligations on the other. The power conferred upon municipal and public corporations to issue commercial securities for such purposes is of comparatively recent origin and has led to disastrous consequences. One of the causes of abuse is the long credit commonly provided for, which leads to over-indebtedness. Those who vote the debt do so without deliberation, as the burden is expected to fall principally on posterity, and has been characterized as an "epidemic insanity." A serious consequence is that even the payment of interest proves to be a heavy burden on the community and in many cases bonds have been issued fraudulently. A
large portion of municipal indebtedness is evidenced by negotiable bonds which are held by thousands of persons at home and abroad, as a profitable investment. The Supreme Court of the United States has upheld the rights of the holders of municipal securities with great persistency and determination, and has always opposed repudiation. The fact that municipal securities have any general value is largely due to the firmness with which the Supreme Court has followed its decisions on the subject. It is now settled by courts of highest authority and is American law that no tax can be authorized by the legislature for any purpose or, to state it in other words, but for a public purpose. There are two great classes of municipal securities: 1st,—ordinary warrants; 2d,—negotiable bonds. It is material to bear in mind the different kinds of corporate evidences of debt. First, there is the
usual municipal warrant or order. They are commonly drawn by one or more of the officers upon the treasurer, directing him to pay to the person named, or bearer, a given sum of money. The power to issue them, and the mode in which it is to be exercised, are usually prescribed by charter or statute. They are vouchers or necessary instruments for carrying on the machinery of municipal administration and for anticipating the collection of taxes. The power to issue such orders may, where not expressly conferred or denied, be implied as incidental to carrying out the objects of a municipal corporation. Such instruments issued by municipal corporations are generally treated as negotiable in the sense of being transferrable by delivery, and in most of the States the transferee or holder may enforce payment by suit or by mandamus in his own name. (Dillon on Municipal Corporations, Sec. 406.) It is
a mistaken notion that they are either commercial paper or possess the attributes of such paper. On the contrary, in whosoever hands they may be or at whatsoever time purchased, whether with or without notice, they are always open to any defense which might have been made against the payee or original holder. (The Mayor, etc. v. Ray, 19 Wall. 468.) The fundamental idea is that they are not commercial securities, and are not governed by the rules of the law merchant in respect to negotiable instruments.

Second, there is the municipal bond, negotiable in form, payable at a future day, intended for sale in the market, issued under express authority of the legislature. These bonds, notwithstanding they are under seal, are clothed with all the attributes of negotiable or commercial paper, pass by delivery or endorsement and are not subject to equities, when the power
to issue them exists, in the hands of holders for value, before due, without notice. Such bonds usually have coupons attached, which partake of the nature of the bond, are likewise negotiable, may be detached and held separately from the bond, and the holder may sue thereon in his own name, without producing or being interested in the bonds to which they were originally attached. (Clark v. Iowa City, 20 Wall. 586. Davis on Negotiable Instruments, Sec. 1509.) Municipal bonds, in the usual form, containing words of negotiability, with coupons attached, are absolute, and not conditional, promises to pay, and hence are negotiable with all the incidents of negotiability, notwithstanding they contain the recital that the bond is issued for the purpose of subscribing to capital stock.

On account of the diversified powers usually conferred
upon chartered or municipal corporations proper, there has always been a strong tendency on the part of the courts to hold that such corporations have an incidental or implied power to issue commercial securities. The line of argument is as follows: Trading and commercial corporations have this power as an incidental means of effecting their objects; why not municipal corporations as well? Municipal corporations are clothed with large powers, which necessarily oblige them to use credit or to create debts; they may borrow the money to pay them, and if they may borrow money, they have the incidental power to do like other borrowers,—namely, to give a negotiable note or bond therefor. This line of argument is denounced as unsound by many authorities. "It is true", says Dillon, "that in this country private business corporations are usually considered to have incidental power to bor-
row money or give negotiable paper as evidence of their indebtedness, but in England it is held that express power is necessary to enable even railway corporations to draw, endorse or accept bills of exchange. But admit that the American doctrine is otherwise, and that it is rightly so, still there is no resemblance between private and public or municipal corporations in this regard. The latter are simply agencies of government. They are not organized for trading, commercial or business purposes. They have, in general, but one mode of meeting their liabilities and that is by taxation, and it is upon this resource creditors must be taken to rely. For hundreds of years in England such corporations have existed, without it ever being contended that they could, without express authority, issue commercial paper. Private corporations are much more vigilant and watchful of their inter-
ests than it is possible for public or municipal corporations to be. The frauds which unscrupulous officers will be enabled successfully to practice, if an implied and unguarded power to issue negotiable securities is recognized, and which the corporation or the citizen will be helpless to prevent, is a strong argument against the judicial establishment of any such power." The argument is unanswerable when it is remembered that in ascertaining the extent of corporate powers there is no rule of safety but the rule of strict construction.

Upon the matter of the rights of holders of authorized negotiable municipal securities, it may be observed that such instruments are commercial paper and governed by the rules of the law merchant. The only defense available is, that there was no power in the defendant corporation to issue the bonds
or instruments in question. This principle is thus expressed in one of the judgments of the Supreme Court: "Bonds, payable to bearer, issued by a municipal corporation if issued in pursuance of a power conferred by the legislature, are valid commercial instruments; but if issued by such a corporation which possessed no power from the legislature, they are invalid, even in the hands of innocent holders."

(St. Joseph Township v. Rogers, 16 Wall. 644.) Irregularities in the exercise of such power, as against a holder for value, without notice of such irregularities, constitute no defense. When bonds or securities are issued under an express power, the legislative act, being the source of authority, measures and limits the power it confers, and the same principles apply to the instruments issued under it by any of these classes of corporations. Legislative authority must
exist in fact.

The statute of limitations commences to run on coupons detached from the bonds, and negotiated separately, from the time the coupons mature; and the operation of the statute, in such a case, is not deferred until the maturity of the bonds to which the coupons belonged. This point has been expressly adjudged by the Supreme Court, in Clark v. Iowa City, 20 Wall. 583.

When municipal bonds have been issued and sold in the market, and, before maturity have come for value, and without notice, into the hands of innocent holders, another element of great importance may be introduced as respects compliance with conditions precedent, i.e. the element of estoppel. Conceding that the rightful exercise of the power to issue the bonds depends upon a condition precedent, a popular vote in
favor of the proposition, when, how and by whom is it to be ascertained whether the condition precedent has been performed? Is it to be ascertained once for all before the bonds are issued? Or is it open to inquiry and contestation in every action upon a coupon or bond? Is the municipality estopped in favor of a bona fide holder of the bonds from setting up this defense? Cases involving these questions often arise and have been before the Supreme Court. The leading case is that of The Commissioners of Knox County v. Aspinwall, 21 Howard, 539. In this case the following principle was established: If upon a true construction of the legislative enactment conferring the authority (viz. to issue municipal bonds upon certain conditions), the corporations, or certain officers, or a given body or tribunal, are invested with power to decide whether the condition precedent has
been complied with, then it may well be their determination of a matter *in pais* which they are authorized to decide will, in favor of the bondholder for value, bind the corporation.

Among the limitations upon the exercise of the power to issue bonds is one that the amount voted or issued shall not exceed a specified proportion of the taxable property of the municipality, or such a sum as will require a greater levy of taxes than a specified rate on the taxable property to pay the annual interest on the bonds. The effect of a disregard of this limitation by the officers entrusted by the statute with the exercise of the power came for the first time before the Supreme Court in 1875, in *Marcy v. Township of Oswego*, 3 Cent. Law Journal, 389. The bonds were duly executed, and contained a recital of the act, and that they were issued "by virtue of and in accordance with* it", and in pursuance of and
in accordance with the vote of three-fifths of the legal voters of the township at an election to be held on a specified day. The plaintiff was a *bona fide* holder for value, without notice. The defense was that they were voted and issued at one time, as one act, and in payment of one subscription *in excess* of the amount authorized by statute. The Chief Justice of the United States distinguished the case from *Knox County v. Aspinwall*, on the ground that the statute imposing the limitation, the order for the election, the proposition submitted, the order for the issue of the bonds and the latest assessment roll were not, properly, matters *in pais*, but were all open, all public and all accessible, and all of record, and if consulted by the purchaser would have shown the bonds to have been voted and issued in violation of the express limitation upon the power contained in the statute. But
the judgment of the Circuit Court was reversed. So the purchaser may implicitly rely upon the recitals in the bonds made by proper officers, that the authority to issue them has arisen, and he is under no obligation to consult the records of the municipality and is not charged with constructive notice of their contents; and this, too, it will be observed, where the recital in the bond was general and not specific in its nature, and where the facts which would have shown the issue of the bonds to have been illegal were matters appearing upon the public records.

The history of the issue of municipal bonds in this country shows that the conditions imposed by law requiring a popular vote have been often evaded and the bonds issued without compliance therewith. To prevent such improper or improvident issuance of bonds, the legislatures of some of the States
have passed acts requiring all bonds to be registered with some of the executive departments of the State before they are issued or negotiated. (Anthony v. Jasper County, 3 Cent. Law Jour. 321.)

A proposition once voted down may be subsequently re-submitted and adopted, unless the act evinces a contrary intention. (Society, etc. v. New London, 29 Conn. 174.)

In the absence of special constitutional restrictions, the competency of the legislature to enact retrospective statutes, to validate an irregular or defective execution of a power by a municipal or public corporation, is undoubted. (Cooley on Constitutional Limitations, Sec. 371, and cases cited.)

A purchaser of municipal securities is bound to see that there exists legislative authority not in conflict with the
State constitution for the issue of the bonds of the municipal corporation, and is bound to notice the contents and recitals contained in the instruments; but if such bonds are duly executed by the proper officers, and if these officers are invested, by the true construction of the legislative enactment in that regard, with power to decide whether conditions precedent have been performed, and the bonds contain a recital that such conditions have been complied with, the issue of the bonds under such circumstances, with such a recital, is conclusive against the municipality as to the facts recited or implied recital, and estops it in an action by an innocent holder for value, before due, to show to the contrary. 110 U. S. 616 qualifies and limits this.
Rights and Remedies of Bond Creditors.

In ascertaining the rights and remedies of bondholders, reference must be had to the legislation under which the bonds were issued. If the legislature authorizes a debt to be created, and provides no special mode for its payment, it is probably a sound proposition that it was contemplated that it should be paid in the usual way in which such debts are paid, viz. by the levy and collection of a tax for that purpose. Where the statute makes express provision for the payment of bonds by the levy and collection of taxes for that purpose, the bondholder has a right to stand upon this provision and to call for its enforcement in his favor; and in such cases it is no answer to his application for this purpose that an execution has not been returned nulla bona, or that the debtor or corporation may have property subject to sale on execution.
The proper mode of enforcing or compelling the performance of the duty of levying and collecting taxes, in such cases, is by mandamus and not by bill in equity. This was first decided in *Walkley v. Muscatine*, 6 Wall. 481.

The remedy of the municipal bondholder in the Federal Courts is to sue at law and obtain a judgment to establish the validity and amount of his debt. (*Heine v. The Levee Commissioners*, 19. Wall. 655.) Thereupon it is usual to issue execution, if the corporate debtor can by law have property subject to execution. On a return of the writ *nulla bona*, application is made upon an information or relation under oath, reciting these facts, for a mandamus to compel the levy and collection of a tax to pay the judgment. But if the bondholder is by the statute entitled to a levy of a special tax to pay his judgment, and if the duty of levying it has been
neglected or refused, it is not necessary in that case that an execution should be returned *nulla bona* in order to give the judgment creditor the right to a mandamus.