

NEBRASKA SCHOOL FUND

(Continued from first page.)

officers expressed themselves as being of the opinion that the law would not permit the investment of the state's money in Nebraska state warrants and wanted an opinion from the attorney general.

Hon. A. S. Churchill, Attorney General. Dear Sir: Agreeable to a desire as informally expressed by yourself and other members of the board of educational lands and funds for time to consider the resolution presented by myself at the meeting on yesterday looking to the investment of a portion of the permanent school fund in registered warrants here-to-for and hereafter to be issued I beg to enclose herewith a copy of the resolution for your consideration and, in doing so, to call your attention to certain provisions of the law and opinions of the court which I have collated in my examination of this question and which, perhaps, will assist you in your consideration of the subject, to-wit: Sec. 8, Art. VIII of the constitution; Sections 24 and 26 of chapter 90, compiled statutes of 1893 edition; 25th Neb. 659; 40th Neb. 298 and 41st Neb. 277.

Yours very truly, SILAS A. HOLCOMB. Now the duties of the attorney general's office are not so engrossing but that they admit the frequent absence of the chief, his deputy and stenographer at Omaha where each holds his residence and takes care of his share of the political machine. An entire week's absence of the attorney general from his office looking after his political fences, sometimes leaving the office in the hands of a clerk and at other times without even an office boy to tell where he has gone does not seem to interfere with the disposition of the legal affairs of the commonwealth, yet it took three months for him to frame an opinion to the effect that state warrants were not "state securities" within the meaning of the law.

Attorney General's Office, State House, Lincoln, Nebraska, April 13, 1896. To The Board of School Lands and Funds. Gentlemen:—In answer to a desire expressed at the January meeting of this board, as then constituted, relative to the investment of the permanent school fund in registered state warrants, I have the honor to make to you the following reply.

In the case of the state vs Bartley, 41 Neb. 281, it appears that this board as then constituted, passed a resolution substantially the same as the one offered by his Honor, the governor, for the action of this board. The difference between the two resolutions will be found in the following: The words in brackets are in the former but not in the latter. Those italicized are in the latter but not in the former.

Resolved, also, that the further sum of \$ (two hundred thousand dollars) of the permanent school fund of the state, or so much thereof as may be necessary, be and hereby is set apart from which to purchase (pay) current registered warrants already drawn, and more drawn between the first days of March and the thirty-first day of December, 1896, (and bearing numbers from Nos. 12293 to 16000) inclusive, and which are drawn in pursuance of an appropriation made by the last legislature, it being determined by this board that said warrants so drawn are secured by the levy of a tax for their payment, (together with accrued interest, it being determined by this board that said warrants are drawn in pursuance of an appropriation made by the legislature) and therefore are state securities; and the state treasurer is (hereby authorized and instructed to at once notify the (several) parties in whose names said warrants are registered of his readiness and willingness to pay the face value of said warrants and the accrued interest thereon, as they may be presented until said sum set aside is exhausted, and when so paid the warrants shall be held by the treasurer as an investment of the permanent school fund; and purpose to pay said warrants, so that the interest on the same shall cease, as provided by chapter 93 of the compiled statutes of Nebraska) and shall be stamped and signed as provided by law.

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Resolved further, (that the state treasurer) a member of this body be, and hereby is, empowered to act in his behalf in determining any questions as to the genuineness and ownership of any and all warrants presented under the foregoing (two) resolutions and when (he is) in doubt he will refer the matter to the chairman to be submitted to the board for its decision.

county bonds of this state, but bound to make good any loss even when so secured.

We are aware of the opinion given in 25 Neb. 665 that opinion is without jurisdiction in the court to make.

Section 2, article VI is: "The supreme court shall consist of three judges a majority of whom shall be necessary to form a quorum, or to pronounce a decision. It shall have original jurisdiction in cases relating to the revenues; civil cases in which the state shall be a party; mandamus, quo warranto, habeas corpus and such appellate jurisdiction as may be provided by law."

No one will claim that the opinion in 25 Neb., was rendered on an appeal, in habeas corpus, quo warranto, mandamus or that the state was a party, or that it related to the revenues. But if it was, it can be fairly said to have been overruled in state vs Bartley 41 Nebraska 277, where the court held that such investment would amount to a transfer of the permanent school fund to the general fund and was in violation of section 9, article VIII.

But let us see what is a warrant. It is simply the evidence of the indebtedness of the state to the individual. The use of the phrase "state securities" must mean something more than merely the guarantee of the state by the process of taxation, for by the previous part of the section it is bound in any event to make good all losses; and this could and would in case of loss have to be made good by taxation, and the purpose of this phrase was to prevent the investment in this way as might lead to loss and necessitate taxation to supply the loss. We must therefore ascertain the real intent in the use of this phrase.

Worcester defines "security" to be anything given as a pledge as for the payment of a debt, or the performance of a contract. He defines "secure" to make certain; to put beyond hazard.

Anderson's dictionary of the law defines "secure" to make safe, or certain, to protect, to save. And "security" an instrument which guarantees the certainty of some specific thing; a surety.

The same author says: "a tax is not a debt, that it is an obligation for the payment of money founded on a contract."

"A tax is an impost levied for the support of the government or for some special purpose authorized by it."

We concluded that the word "securities" as used in this section of the constitution means some obligation which the state has in some specific form contracted to pay, and that a warrant drawn by the auditor of public accounts on the general fund is not such state security as was contemplated by this provision of the constitution. Had it been the intention to so invest that fund in warrants it seems to me that the framers would have used the word "warrants" and not "securities."

I am further persuaded that I am correct in my conclusion from the decision of the court in state vs Bartley, 41 Nebraska, 298 and state vs Bartley, 39 Nebraska, 353.

The legislature must also have regarded this section 3 of article VIII of the constitution as precluding the investments as indicated by these resolutions, or it would not have passed a resolution to amend the constitution, providing the amendment of this section 3 article VIII so as to make it read as follows, in relation to the investment of the permanent school fund in registered warrants:

"And provided further that when any warrant upon the state treasurer regularly issued in pursuance of an appropriation by the legislature and secured by the levy of tax for its payment, shall be presented to the state treasurer for payment, and there shall not be any money in the proper fund to pay such warrant, the board created by section one of this article may direct the state treasurer to pay the amount due on such warrant from moneys in his hands belonging to the permanent school fund of the state, and he shall hold said warrant as an investment of said permanent school fund."

This being the interpretation given both by the court and the legislature, I conclude that this board is not authorized to invest the permanent school fund as indicated by the resolutions of his Honor.

Yours Respectfully, A. S. CHURCHILL. A more remarkable document perhaps never emanated from the legal department of the state and it is safe to say that no lawyer of ability with an atom of professional pride, would give to this document his endorsement. It was made to fit the occasion and to preserve in the hands of the state treasurer the funds belonging to the school children of Nebraska in order that J. S. Bartley and not the state should reap a revenue thereby.

The announcement of this opinion was not a surprise to Governor and he was prepared to give them another nut to crack. It came in the form of this resolution:

RESOLUTION.

Whereas, it is provided by constitutional and statutory enactment that all funds belonging to the state for educational purposes, the interest and income whereof, only, are to be used, shall be deemed trust funds held by the state and shall remain forever inviolate and undiminished, and that such funds, with the interest and income thereof, are solemnly pledged for the purpose for which they are granted and set apart; and that the board of educational lands and funds shall at their regular meetings make the necessary orders for the investment of the principal of the fund derived for educational purposes aforesaid; and

Whereas, it appears that the uninvested permanent school fund of this state has grown from \$417,313.61 on December 1, 1894, to \$611,111.67 on March 1, 1896; that, during all of said time there has been purchased and obtained as an investment for the benefit of said permanent school fund the sum of \$45,360.61, or less than 8 per cent of the total sum required to be invested as aforesaid; and

Whereas, it has heretofore been determined by a vote of a majority of this board that said fund cannot be invested in state warrants which are being issued from time to time, and which draw interest at the rate of 5 per cent per annum; and

Whereas, it appears that but few county bonds are being voted from time to time in the different counties of the state, and, when voted, it is extremely difficult to obtain the same as an investment for the said permanent school fund because of the desirability of such bonds as investments and the competition arising over securing the same as a private investment; and

Whereas, it appears from the market quotations as to prices of United States government bonds that the same may be obtained by the state as an invest-

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ment for the said permanent school fund upon a basis that will earn for the said permanent school fund at least 3 per cent interest per annum, which is more to be desired and advantageous to said fund than to allow the same to remain idle, earning nothing for the benefit of the common schools of the state; therefore be it

Resolved, By this board that the sum of \$500,000 be set aside for the purchase of United States registered or coupon 5 per cent bonds, redeemable February 1, 1904, and the state treasurer is hereby authorized and directed to purchase said United States registered or coupon bonds for the benefit of said school fund to the amount of \$500,000.00, as aforesaid, upon the most advantageous terms and upon a basis of a rate of interest thereon not less than 3 per cent per annum, and that said purchases be made as follows, to-wit: \$100,000.00 on or before May 1, 1896; \$200,000.00 on or before June 1, 1896; \$200,000.00 on or before July 1, 1896.

Provided, That if, at any time before the last mentioned date, said money or any part thereof, before being invested as above contemplated, can be invested in United States or state securities or county registered bonds yielding a greater rate of interest than heretofore mentioned, upon an order being made by this board then said amounts so invested shall be withdrawn from the amount heretofore set aside for investment in United States securities as aforesaid.

The annoyance of the republican majority was very evident, no action whatever being taken. Some of the members expressed a willingness to invest in county bonds, although only a few days prior to this they had compelled the board of county commissioners of Otoe county to sell their issue of \$85,000 to Dietz, Denison & Prior, of Cleveland, Ohio. The Otoe county bonds drew 5 per cent interest, and, although the board had accepted Greeley county's \$30,000 at 4 1/2 per cent under pressure from the governor, they demanded 5 per cent from Otoe. The reason was apparent. The Otoe issue of \$85,000 would cut too big a hole in the funds distributed among favorite banks for the pecuniary profit of the treasurer and the political good of his party.

When the Otoe county commissioners went home Commissioner Russell, as secretary of the state board, without any authority whatever except the consent of his republican associates, and without the knowledge of the governor, who is chairman of the board, wrote to them that they would have to accept at once if they wanted to dispose of their bonds, as the board had proposals under consideration that would take all the available funds on hand. With over \$600,000 supposed to be in the treasury for the permanent school fund, this officer tells the people who are seeking to give a reasonable interest to the state for the use of a part of this sum, that there is on hand only enough to meet propositions under consideration. At that time there was under consideration, if anything, only the resolution of Governor Holcomb to invest in United States bonds, and it had been refused consideration, in fact. The only reasonable construction to be placed on this letter is that the treasurer doesn't have on hand this permanent school fund. No propositions may be sufficient to invest all of the school funds of the state the treasurer could produce.

At the May meeting of the board Governor Holcomb sprang another surprise on his associates by submitting a proposition for the purchase of the Otoe county bonds from the Cleveland firm at a rate yielding 4 7/10 per cent interest to the state. This is the way the resolution read:

"Whereas, The authorities of Otoe county, Nebraska, have issued refunding bonds of said county in the sum of eighty-five thousand dollars (\$85,000), dated May 1, 1896, drawing interest at the rate of five (5) per cent per annum, payable semi-annually on the first days of May and November of each year, and payable in twenty years with the option of payment after ten years; and

"Whereas, Said county authorities have sold said bonds to Dietz, Denison & Prior, of Cleveland, Ohio; and

"Whereas, The parties purchasing said bonds offer to sell the same to the state of Nebraska as an investment for the permanent school fund (subject, however, to an option given on said bonds expiring Thursday, May 14, 1896), for the sum of one hundred and three cents (103 cents) on the dollar and accrued interest, thereby yielding a rate of four and seven-tenths (4 7/10) per cent interest upon the face value of such bonds for the benefit of the temporary school fund; therefore, be it

"Resolved, That said offer be and it is hereby accepted, provided, that said bonds are in all respects regularly and legally issued and registered as required by law; and the state treasurer is hereby authorized and directed to pay said parties for said bonds one hundred and three (103) cents on the dollar, par value, and accrued interest thereon to the date of purchase out of the permanent school funds now in his hands, and to receive, stamp and hold said bonds as an investment for said permanent school fund as required by law; also that the secretary of this board be requested to notify Dietz, Denison & Prior of the board's acceptance of their offer."

This followed directly after the acceptance of the Greeley and Boone county bonds at 4 1/2 per cent, so the board could not complain of the rate of interest. The only way out of the dilemma was to render the proposition so distasteful to the brokers that it would be declined. To this end Commissioner Russell amended the governor's resolution with the provision that the brokers would have to accept their premium out of the interest coupons. With this absurd amendment the final result is uncertain.

In regard to this matter the Custer County Beacon says:

In an editorial in last week's issue the Broken Bow Republican had the effrontery to place on the shoulders of Govern-

or Holcomb the responsibility for the noninvestment of the \$611,000 of the permanent school funds of the state. It can hardly be that the Republican editor speaks from ignorance, for the state press has been replete for months with information as to the latest effort of his excellency to get the state funds invested. The disinclination of the treasurer to allow these funds to be invested in state, county or government bonds, may arise either from his desire to continue drawing interest himself from banks for the deposits, or his inability to produce the state's funds, or both. Mr. Bartley has the united support of the board of educational lands and funds in keeping his grip on the state's money. As a fifth member, constituting in himself a hopeless minority, Governor Holcomb has succeeded in worrying the majority by a series of resolutions and proposals to invest funds, and has compelled the gang to show their hands.

After recounting the many efforts made by Governor Holcomb to induce the board to invest this fund as required by law, the Beacon asks:

Can the editor of the republican attempt to say that Governor Holcomb was at fault because the school fund was not invested? Most any other man would have given up in dismay, but the governor did not. He introduced a resolution two days later to invest the fund in government bonds. Although he evidently preferred the state securities, he was willing to place the funds in any safe investment by which the state could receive a return in interest. This resolution was hung up to dry, and the board has declined, by action of the unanimous opposition to Governor Holcomb, to consider it at all.

Determined to do all in his power to force his colleagues on the board to take some action looking toward the investment of this great sum of the state's money which is supposed now to be lying idle in the vaults of the treasury, the governor has sought out investments from all parts of the country. He it was who proposed the purchase of \$6,500 of Valley county refunding bonds, \$40,000 of Otoe county refunding bonds, \$30,000 of Greeley funding bonds and \$25,000 of Boone county court house bonds.

A great many men in different parts of the state dreading the loss of Nebraska's school fund, have written to enquire about it. Of these letters we publish the following:

KEARNEY, Neb., June 6, 1896. EDITOR INDEPENDENT:—In the campaign of 1894 I publicly made the charge on suspicion, that the state school funds reported on hand in the treasury were not there nor available at the call of the treasurer. Of course I could not know where the money was, but then expressed the belief that the \$540,000 reported on hand by the auditor had been deposited in the banks which "stood in" with the state whose politicians and that those banks could not produce the money. Was my suspicion correct? If not then why was this money kept on hand as reported by the auditor? Why is it not invested as required by law? Section 8, chapter 80 compiled statutes, passed in 1885, requires the board of educational lands and funds to invest the state school funds, and section 25 provides that they shall be invested in United States or state securities or in county bonds, also that state warrants on other funds may, under certain conditions, be paid out of the permanent school fund.

One of two things must be true, either the permanent school funds now said to amount to \$600,000, are not on hand nor available, or the board has persistently violated the law by refusing to keep it invested. The recent effort of Governor Holcomb to have the board do its duty, ought to be followed by vigorous action in the campaign this year. Not only should Governor Holcomb be reelected but the voters must see to it that a populist treasurer, auditor and attorney-general be elected, if no more. Then we can make a search for that \$600,000 and if found, provide for its safe investment. Then if we can elect a legislature, we can provide for the appointment of a legislative committee once in two years to settle with the state treasurer so that a faithful record may always be made and kept on the state's financial condition.

In closing I would like to know just for curiosity if the republican secretary of state, treasurer, attorney-general and commissioner of public lands and buildings voted against Governor Holcomb's resolution to invest the funds because they knew those funds had vanished. Yankee like, I am "guessing" that is the reason. W. L. HAND.

THE GREAT HUXLEY.

What Huxley, the Great English Scientist, Considered the Best Start in Life.

The great English scientist, Huxley, held the best start in life is a sound stomach. Weak stomachs fail to digest food properly, because they lack the proper quantity of digestive acids (lactic and hydrochloric) and peptogenic products; the most sensible remedy in all cases of indigestion, is to take after each meal, one or two of Stuart's Dyspepsia Tablets, because they supply in a pleasant, harmless form all the elements that weak stomachs lack.

The regular use of Stuart's Dyspepsia Tablets will cure every form of stomach trouble except cancer of the stomach. They increase flesh, insure pure blood, strong nerves, a bright eye and clear complexion, because all these result only from wholesome food well digested.

Nearly all druggists sell Stuart's Dyspepsia Tablets at 50 cents full sized package. Send for free book on Stomach Troubles to Stuart Co., Marshall, Mich.

M'NERNEY & EAGER, Attorneys, 1034 O Street, Lincoln, Neb.

SHERIFF SALE.

Notice is hereby given that by virtue of an order of sale issued by the clerk of the district court of the Third Judicial district of Nebraska, within and for Lancaster county, in an action wherein William Warner is plaintiff, and Robert J. Greene et al., defendants, I will, at 2 o'clock p. m., on the 23rd day of June, A. D., 1896, at the east door of the court house, in the city of Lincoln, Lancaster county, Nebraska, offer for sale at public auction the following described real estate to-wit:

Beginning at the northwest corner of the north half of the northwest quarter of section twenty-eight (28), township eight (8), range six (6), east and running thence east to the west line of the projected right of way, depot and switching grounds of the Chicago, Rock Island & Pacific Railway Co., as the same is now surveyed and staked and laid out across said north half of the northwest quarter of section twenty-eight (28), township eight (8), range six (6), thence southerly along said line to the intersection of said projected Chicago, Rock Island & Pacific Railway Co. grounds with the south line of said north half of the northwest quarter of section twenty-eight (28), township eight (8), range six (6) east, thence west to the west line of said north half of the northwest quarter of section twenty-eight (28), thence north to the place of beginning, in Lancaster county, Nebraska.

Given under my hand this 20th day of May, A. D., 1896. JOHN J. TROMPEN, Sheriff.

Ripans Tabules: gentle cathartic.

VERY MUCH SURPRISED.

The Result in Oregon Knocks the Gold Bugs Crazy.

WASHINGTON, June 8, 1896.

Special to the INDEPENDENT.—The news from Oregon, showing that the people's party has elected two congressmen in Oregon, (that is, every congressman in the state) at the election last week has greatly surprised the politicians of both of the old parties here. The fact that it was a straight fight between the three parties, and that the people's party candidate defeated both the democratic and republican candidates, adds to the chagrin and disappointment of the gold men and the old party leaders. The result, however, was confidently expected by the people's party senators and congressmen, who have been greatly interested in the fight in Oregon, and have kept close in touch with the progress and details of the great campaign that has been waged there for the last few months and which has resulted in such a triumphant victory for the people's party. This is more than a straw which shows which way the political wind is blowing. At least it is a good starter for the great national campaign this year, and shows not only that the people's party will be an important factor in the same, but also shows to the clear observer of political affairs that the people's party is not only growing rapidly in strength, but that it will yet redeem the nation from the clutches of the English gold ring in spite of the infamous treachery and duplicity of the two old parties for the last twenty years.

The gold men are anxious to have congress adjourn as early as next Wednesday or Thursday, but it is by no means certain as yet that the senate will decide to adjourn so early.

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Often Causes No End of Trouble.

Probably half the people who see this article suffer from piles. It is one of the most common diseases, and one of the most obstinate. People have it for years, and just because it is not immediately fatal they neglect it. Carelessness causes no end of suffering. Carelessness about so simple a thing as piles has often caused death. Hemorrhages occur during surgical treatment, often causing death.

Piles are simple in the beginning and easily cured. They can be cured even in the worst stages without pain or loss of blood, quickly, surely and completely. There is only one remedy that will do it—Pyramid Pile Cure.

It allays the inflammation immediately, heals the irritated surface and, with continued treatment, reduces the swelling and puts the membranes into good, sound, healthy condition. The cure is thorough and permanent. Druggists sell the Pyramid Pile Cure at 50 cents. Send for free book on Cause and Cure of Piles.

Illinois Waking up.

John P. Steele of the Mt. Vernon Progressive Farmer, who has been uninterruptedly in the reform work since 1883, recently made a tour of all the lower counties of that state. He reports that in all the years of reform agitation, he never saw the people take so great an interest in the money question.

THE GREAT HUXLEY.

What Huxley, the Great English Scientist, Considered the Best Start in Life.

The great English scientist, Huxley, held the best start in life is a sound stomach. Weak stomachs fail to digest food properly, because they lack the proper quantity of digestive acids (lactic and hydrochloric) and peptogenic products; the most sensible remedy in all cases of indigestion, is to take after each meal, one or two of Stuart's Dyspepsia Tablets, because they supply in a pleasant, harmless form all the elements that weak stomachs lack.

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Given under my hand this 20th day of May, A. D., 1896. JOHN J. TROMPEN, Sheriff.

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This excellent book by S. S. King contains 60 illustrative diagrams showing clearly the misfortunes that have come to the people, the causes that produce them and the remedy that will remove them. A large number of copies have been furnished to the Nebraska Silver League which they will sell in order to raise money for postage at one half the regular price. Send 25 cents and get two copies. Address Secretary of silver league, 1122 M street, Lincoln, Nebraska.

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