

OPINION
OF THE
ATTORNEY - GENERAL
ON
COUNTY INDEBTEDNESS.

To the Honorable the House of Representatives:

In reply to the resolution of the House, of date February 12, 1868, a copy of which is hereto appended, I have the honor to submit:

First.—The Constitution, Article XI, Section 3, provides as follows, viz: "No county, or other political or municipal corporation shall be allowed to become indebted in any manner or for any purpose to an amount in the aggregate exceeding five per centum on the value of the taxable property within such county or corporation, to be ascertained by the last State and county tax lists previous to the incurring of such indebtedness."

This provision of the Constitution, in my judgment, leaves to the discretion of the General Assembly, subject to the limitation therein expressed, the sole power to say how far, for what purpose, and in what manner, counties, townships, or cities, may incur indebtedness, that is beyond their necessary, incidental, or police expenses.

Second.—This is evidently the construction given to the above article of the Constitution by the Legislature. Article 8, of Chapter 54, of the Revision, an act passed by the Eighth General Assembly, provides as follows, viz: "That no county, incorporated city, or town, in this State shall, in their corporate capacity, or by their

officers, directly or *indirectly*, subscribe for stock, or become interested as a stockholder or otherwise, in any banking institution, whether the same be a bank of issue, deposit, or exchange, nor in any plank road, turnpike, or railroad, or any other work of internal improvement; nor shall they be allowed to issue any bonds, bills of credit, scrip, or other evidences of indebtedness for any such purpose; all such evidences of indebtedness for said purposes being hereby declared absolutely void; *provided*, that this act shall not be so construed as to prevent, or in anywise embarrass the counties, cities or towns, or any of them, in the erection of their necessary public buildings, bridges, laying of roads and highways, streets, alleys, and public grounds, or other *local* works in which said counties or towns may be respectively interested."

The above is all the legislation directly bearing on the question; I am not aware of any act of the General Assembly touching this matter since the act above quoted, and which took effect May 2, 1860.

The inquiry embraced in the resolution, it will be seen, is very broad, whether there is any constitutional objection to a law authorizing counties, &c., *to subscribe to the stock, or otherwise aid* in the construction, &c.

I beg leave to call the attention of your Honorable Body to Sec. 3, Article 8, of the Constitution: "The State shall not become a *stockholder* in any corporation, &c." I think the fair meaning and spirit of the above provision includes all political subdivisions of the State as counties, townships, and all municipal corporations created by State law, and without troubling you with argument on that point, beg to state as my conclusion, that the General Assembly can not by law confer the power on these corporations *to subscribe to the stock, &c.* They could not well subscribe to the stock without becoming stockholders.

But I think the General Assembly may under the Constitution by law confer the power on counties, townships, cities and towns, or on any of them, *to contribute* an amount not exceeding five per cent on the assessed value of the property in such corporation, to aid in the construction of railroads or other work of internal improvement, and if necessary to borrow money or levy a tax for such purpose, the

corporation taking no stock nor share in the pecuniary profit or loss of such railroads or other work, and the consideration for such aid being the public benefit and convenience accruing from the construction of such works of internal improvement.

In the passage of any such law it will of course be necessary to modify or repeal section 1345 of the Revision above quoted.

To the passage of such a law as I have just indicated with proper safeguards and limitations against its abuse, I think there is no constitutional objection.

Very Respectfully, &c.,

HENRY O'CONNOR,
Attorney General.