

COUNTY COURTS:
SALE OF BONDS:

The authority of the county court to pay
compensation to agent for selling refunding
bonds.

January 23, 1941

Honorable G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri

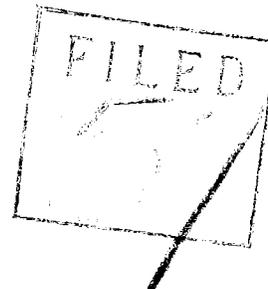
Dear Sir:

This is in reply to yours of recent date wherein
you submit the following question:

"In 1940, the county court entered into
a contract to refund some county bonds,
at a lower rate of interest. Under
this contract, the agent for the county
was to receive \$15.00 per thousand for
refunding the old bonds for the new
bonds at the lower rate of interest.
The old bonds were callable and were
called Feb 1, 1941. The refunding
agent wants his service fee for the
refunding. In the interest and sink-
ing fund of this original bond issue
there is enough surplus to pay this
service charge. There will be a sur-
plus therein for the next year at
least on account of the reduction
in the interest rate as between the
old bond and the new bonds.

"Is it permissible to use this sur-
plus in the interest and sinking fund
to pay this service charge on this re-
funding?"

Section 2892, as amended by Laws of Missouri, 1931,
at page 138, in so far as it applies to your inquiry,
provides as follows:



"The various counties in this state for themselves as well as in behalf of any township or parts of townships for which said counties may have heretofore issued any bonds, and the several cities, villages, incorporated towns, school districts and road districts in this state, are hereby authorized by their respective county courts and the said cities, villages, incorporated towns, school districts and road districts by their proper authorities, to fund or refund any part or all of their bonded or judgment indebtedness, including bonds, coupons or any judgment, whether based on bonded or other indebtedness, and for that purpose may make, issue, negotiate, sell and deliver renewal, funding or refunding bonds, and with the proceeds thereof pay off, redeem and cancel such judgments or old bonds and coupons as the same mature or are called for redemption, or such renewal, funding or refunding bonds may be issued and delivered in exchange for the judgments, bonds or coupons to fund or refund which the renewal, funding or refunding bonds were issued: Provided, that in no case shall the amount of the debt of any such county, township or parts of townships, or city, village, incorporated town, school district or road district be increased or enlarged under the provisions of this chapter, and provided also that no renewal, funding or refunding bonds issued under this chapter shall be payable in more than twenty years from the date thereof, and that such renewal, funding or refunding bonds shall be of the denomination of not more than one thousand dollars (\$1,000) nor less than

one hundred dollars (\$100) each, and shall bear interest at a rate not to exceed six per centum (6%) per annum, payable annually or semi-annually, and to this end each bond shall have annexed thereto interest coupons, and such bonds and coupons shall be made payable to bearer: Provided further, that nothing in sections 2892 to 2894, inclusive, shall be so construed as prohibiting any county, city, township, school district or road district from renewing, funding or refunding such debt without the submission of the question to a popular vote: Provided, however, that no indebtedness, judgment or claim founded on bonds or coupons issued in the aid of or in payment for the capital stock of any railroad company shall be funded, nor shall any bonds be issued in lieu thereof or in compromise therefor until authorized by a majority of the qualified voters of such county, city, township or parts of townships voting at an election held for that purpose pursuant to an order entered of record by the county court of such county or council or aldermen of such city on petition of at least fifty of the resident taxpayers of such county, city or township, after public notice by advertisement in some weekly newspaper printed and published in such county or city, if there be such paper, and if not, then in such paper nearest to such county or city, setting forth the object of the election, for four weeks, and in addition posting up ten written or printed handbills in public places in such county or city, before the time for such proposition to fund its said indebtedness shall be voted on, which said notice shall contain the

object and general nature of the proposition to fund said indebtedness. The election herein provided for shall be held in conformity with the statutes of the state covering state, county or municipal elections. And when such indebtedness has been once compromised and funded, the funding bonds issued in lieu thereof may again be refunded according to the other provisions of this article without such election."

Your question goes to the authority of the county court to pay out of the surplus in the interest and sinking fund the service charge for this refunding.

It will be noted by the underscored words in said Section 2892 that the General Assembly authorized the county court to negotiate, sell and deliver such bonds as you have described in your request. The lawmakers have expressly directed county authorities to perform a certain duty. By that direction all acts necessary to carry out this expressed direction are implied. One of the most recent announcements of this rule by our Supreme Court was in State on Inf. McKittrick, Attorney General, v. Wymore, Prosecuting Attorney, 132 S. W. (2d) 979 at 987:

"The duties of a public office include those lying fairly within its scope, those essential to the accomplishment of the main purpose for which the office was created, and those which, although incidental and collateral, serve to promote the accomplishment of the principal purposes." 46 C. J. Sec. 301, p. 1035.

"The rule respecting such powers is, that in addition to the powers expressly given by statute to an officer or a board of officers, he or it has, by implication, such additional powers, as are necessary for the due and efficient

exercise of the powers expressly granted, or as may be fairly implied from the statute granting the express powers.' Throop's Public Officers, Sec. 542, p. 515.

"Necessary implications and intentions from the language employed in a statute may be resorted to to ascertain the legislative intent where the statute is not explicit, but they can never be permitted to contradict the expressed intent of the statute or to defeat its purpose. That which is implied in a statute is as much a part of it as that which is expressed. A statutory grant of a power or right carries with it, by implication, everything necessary to carry out the power or right and make it effectual and complete, but powers specifically conferred cannot be extended by implication'.

Said Section 2392, supra, does go into detail as to how the county court shall dispose of the refunding bonds, but it is a matter of common knowledge that such court, not being familiar with the bond markets, it would necessary for them, in order to carry out their duties, to negotiate with some person or firm who was familiar with such markets.

Similar questions have been before our court on various occasions, and we respectfully refer to the case of Church v. Hadley, 240 Mo. 680, in which brokers were allowed a commission for selling the state capitol bonds. The court, in effect, held in that case that the power to sell carries with it the usual means to secure such reasonable and proper assistance as may be necessary to bring about an advantageous sale of the bonds. At l. c. 700 in the Church case, supra, the court quoting from a New York case, 156 N. Y. 363, italicized the following words:

"* * The authority to sell water bonds, therefore, carries with it the authority

to secure such reasonable and proper assistance as may be requisite to bring about an advantageous sale of the bonds. *****"

Again at l. c. 704 of the Church case, supra, the court finally said:

"We are therefore of opinion * * * * * (4) that the facts of this case show a full and adequate effort upon the part of the Board of Fund Commissioners to sell these bonds without outside assistance, and (5) that under such facts there is from the legislative acts, supra, a clearly implied power, which authorizes such board to enter into a contract with some financial agent to procure for such board a purchaser or purchasers who will take such bonds at their par value, and in such contract to agree to pay and pay such agent, out of the proceeds of the sale, a reasonable commission for the services rendered."

It will be noted from this case that the court authorized the Board of Fund Commissioners to take out of the proceeds of the sale of the bonds a reasonable commission for the services rendered by the bond salesman. It also found by subsection (4) of their findings that a full and adequate effort on the part of the Board of Fund Commissioners had been made before they sought the services of an outside agency.

We presume in your case that the county court found it was not able to sell these bonds without the aid of the outside agency. The case of State ex rel. v. Hackmann, 275 Mo. 636, held that the Fund Commissioners, being empowered to enter into contracts and to refund any part of the bonded indebtedness of the state, authorized them to make contracts for the sale of these bonds.

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This department is not passing upon the reasonableness of the fees because that is a matter for the county court and unless it acts arbitrarily or irregularly, then under the authorities hereinbefore set out the court may pay such compensation.

CONCLUSION

From the foregoing it is the opinion of this department that the county court, by virtue of its power to sell refunding bonds, is authorized to employ an agent and pay compensation therefor for any person or firm assisting or bringing about the sale of such funding bonds.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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