

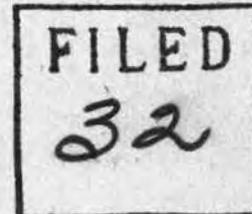
COUNTY:

Third and fourth class counties may issue negotiable "tax anticipation notes" to borrow money on anticipated tax collections.

March 31, 1950.

3/31/50

Hon. A. L. Gates,
Prosecuting Attorney
Moniteau County,
California, Missouri.



Dear Mr. Gates:

This is in reply to your recent request for an opinion from this department reading as follows:

"I would like to know the legal effect of a county handling protested warrants in the following manner:

"The county does not have sufficient revenue in class 3 for roads to carry on the proper maintenance of county highways. So instead of issuing a large group of warrants which must be protested individually, the county issues one large warrant which is protested, and on this protested warrant a bank makes a loan, the money obtained from this loan is then used to take up the ordinary and usual warrants in said class 3.

"May a county borrow on anticipated revenue in this manner? What legal protection does the bank have when it purchases or loans money on the one large protested warrant? What is the county's liability.

"As prosecuting attorney, I would like very much to have an official opinion on these questions involved in this problem."

Your primary question is whether a county may borrow on anticipated revenue, and since Moniteau is classified as a third class county we assume you desire an answer applicable to counties of that class.

Your attention is directed to L. 1945, p. 1411 (R.S. Mo. annotated, Sec. 13927a to 13927h) which provides the method a county court may follow in borrowing money and issuing negotiable notes. Those sections read as follows:

"L. 1945, p. 1411, Sec. 13927a: County court authorized to issue negotiable notes to be paid in one year out of revenue.-- The county court in counties of class 3 and class 4 may by resolution, duly passed by a majority of the judges thereof, and upon order of said court, issue negotiable notes payable in one year or less from the date of issue out of the current county revenues, respectively, to be derived from taxes or other revenues of the county of the year in which said notes are issued; but where taxes are levied for special purposes or revenues derived from special sources other than taxes resulting from a levy, the notes issued against the anticipated revenues derived therefrom shall bear a statement that the said notes are to be paid out of said special taxes or special revenues.

"L. 1945, p. 1411, Sec. 13927b. Notes to be known as tax anticipation notes - made by county treasurer, signed by presiding judge, and attested by county clerk.-- Said notes shall be known as tax anticipation notes, and by no other name, and on the back of each of said notes there shall appear a certificate that it is issued pursuant to an order of the county court, the total borrowing power herein authorized and the aggregate principal amount of all prior notes and warrants theretofore issued and registered at that date. Such certificate shall be made by the treasurer of the county wherein such notes are issued and his signature thereto shall constitute conclusive evidence to the holder of such note that the same was duly authorized under and within the powers, limitations and provisions of this act. Said notes shall be signed by the presiding judge of the county court, attested by the county clerk with the seal of his office affixed thereto.

"L. 1945, p. 1411, Sec. 13927c. Estimation of county revenue to be basis for issuing anticipated notes.-- The notes herein authorized shall not be issued until after the anticipated revenue for the year has been estimated, as herein provided in Section 13927e, and when issued shall be in proportion to the total estimated revenue as follows: Not to exceed ten per cent (10%) in any one month in any year and the total of such notes issued shall not exceed ninety per cent of the total anticipated revenue in any county in any one year, but if said notes, or any thereof, shall not be issued within or at the times so fixed, they may be

subsequently issued to the amount so limited, but in no event shall said notes be issued if there be on hand general revenues sufficient to pay the general operating expenses of the county.

"L. 1945, p. 1411, Sec. 13927d. Issued for no longer than twelve-month period.-- Said notes shall be issued to mature in one or more months, but not to exceed twelve months, after date of issue, shall be payable to bearer, shall bear a rate of interest not to exceed six per cent per annum from date until maturity, and shall be in such form as the county court may prescribe. If sufficient funds shall not be on hand to pay any of said notes at maturity the same shall continue to bear interest at the rate therein provided until necessary funds are available for the payment thereof.

"L. 1945, p. 1411, Sec. 13927e. Board of estimate of anticipated revenue.-- The judges of the county court, the clerk of the county court, the assessor, the collector and the treasurer of the county shall constitute a board of estimate of anticipated revenue. In each year, after the tax levy shall have been made by the county court, said board shall make an estimate of the revenues of the county for the current year: Provided, however, that such estimate may be made at any time during the year prior to the making of such tax levy upon the basis of a tentative levy made by the county court, but if the estimate shall in due course be thereafter changed or such levy shall be changed when made at the time provided by law, then such prior estimate shall be changed and corrected accordingly to conform to the facts, and the amount of the notes to be subsequently issued, shall be limited or may be enlarged to conform to such subsequent or corrected estimate, so that in no event will the aggregate of all notes issued exceed ninety per cent of the percentage of the taxes which will be collected for the current year, the board in making said estimate will use the average percentage of collections of general county taxes of the prior three years.

"L. 1945, p. 1411, Sec. 13927f. County treasurer to sell notes - publication - private sale.-- The county treasurer is authorized to sell such notes upon the order and under the direction of the county court, and shall cause notice to be published for ten days in at least two weekly papers of general circulation published in the county; that sealed proposals for the purchase of all or any part of said notes will be received at his

office, and that the same will be opened by him in the presence of the county court on the day and year mentioned in the notice. Said treasurer shall, under the direction of the court, reject any or all bids that the court may not deem satisfactory as to price or otherwise, and in case of rejection, he may again advertise and sell said notes in the same manner. Or, if the court so order, the county treasurer may sell the said notes or any part thereof at not less than their face value, at private sale without advertisement, and report the same to the court at the next term thereafter.

"L. 1945, p. 1411, Sec. 13927g. Registration of notes.-- The faith and credit of the county shall be deemed to be pledged for the payment of said notes with interest in the manner and from the funds herein specified as though a statement to that effect were indorsed thereon. All notes issued under this article shall be registered immediately before delivery in the office of the county treasurer and the clerk of the county court, in books kept for that purpose which registry shall show the number, date, amount, date of sale, name of the purchaser and the amount for which the notes were severally sold, and such notes shall have preference and priority in payment, from the date of registration, over all notes and warrants subsequently issued and registered in such counties and over all prior issued unregistered warrants.

"L. 1945, p. 1411, Sec. 13927h. Proceeds from sale of notes to be deposited in county treasury - used only to pay warrants - use of surplus.-- The moneys derived from the sale of the tax anticipation notes herein authorized, shall be deposited with the county treasurer and the clerk of the county court shall charge the treasurer of the county therewith. And said moneys shall be used solely for the payment of county warrants of such counties issued for the payment of the expenses and obligations of the county of the fiscal year in which said notes are issued; but should there remain a surplus after all said warrants have been paid the said surplus may be applied on the order of the county court to the payment of maturing anticipation notes if any or transferred to the various county funds respectively according to law."

Prior to the effective date of this act in 1946, counties of this class were not authorized to borrow money against anticipated tax collections. There was no general statute conferring authority on county courts to borrow money for the county in anticipation of tax collections except in counties with a population in excess of 50,000 inhabitants. There is now no statute establishing the procedure suggested in your letter, i.e., for a county to issue a warrant which when protested to be used as basis for a loan. A county may borrow money on anticipated revenue but only in the manner prescribed by the statute cited supra.

Section 13927g provides the extent of legal protection afforded to the holder of the note so issued in these words, "The faith and credit of the county shall be deemed to be pledged for the payment of said notes with interest* * *."

Since this act provides a specific method which a county of the third class may follow in borrowing money on anticipated revenue, this method is exclusive and the county cannot borrow money by issuing warrants.

CONCLUSION.

A third or fourth class county may borrow money on anticipated tax receipts by issuing negotiable tax anticipation notes, and cannot borrow money by the issuance of warrants.

Respectfully submitted,

JOHN E. MILLS,
Assistant Attorney General

APPROVED:

J. E. TAYLOR,
Attorney-General

JEM/LD