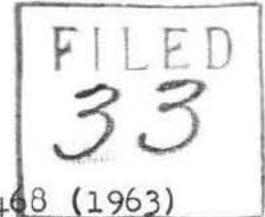


NURSING HOMES:
NURSING HOME DISTRICTS:
BONDS:
ELECTIONS:

Nursing home district may not issue bonds up to ten per cent of value of taxable tangible property in such district. Nursing home districts may issue bonds to an amount of five per cent of the value of the taxable tangible property in such district.

January 30, 1964



OPINION NO. 468 (1963)
33 (1964)

Honorable Thomas G. Woolsey
Senator, 33rd District
Mason Building
Versailles, Missouri

Dear Senator Woolsey:

This is in answer to your letter of recent date requesting an official opinion of this office which reads as follows:

"Some of the people residing in a portion of my senatorial district are desirous of forming a Nursing Home District under the Nursing Home District Law. They have, in addition to making arrangements to follow the statutory procedures to set up their District, contacted a law firm in the western part of the state requesting an opinion as to the validity of any bonds that might be voted after such organization. The bond attorneys have raised the question as to whether or not the Nursing Home District Law is valid or not, in that this law authorizes Nursing Home Districts to issue bonds in an aggregate amount equal to 10% of the value of the taxable tangible property in the District,

Honorable Thomas G. Woolsey

despite the fact that the Constitution of the State of Missouri limits the issuance of bonds by political subdivisions of the State to 5% of the assessed valuation.

"Therefore, I would appreciate your furnishing me an opinion in regard to the following:

"1. May a Nursing Home District formed under the new law (Sections 198.210-350, inclusive), issue bonds in an aggregate amount equal to 10% of the value of the taxable tangible property within the District?

"2. If not, is the Nursing Home District Law invalid in its entirety?

"3. If not, could any District formed under the Nursing Home District Law, issue valid bonds, if the aggregate amount of such bonds did not exceed 5% of the assessed valuation of the property within the District?"

Section 198.310, RSMo Cum. Supp. 1963, authorizes the issuance of bonds by nursing home districts formed under the provisions of Sections 198.200 to 198.350, RSMo Cum. Supp. 1963, and such section provides in part as follows:

"3. The loans authorized by this section shall not be contracted for a period longer than twenty years, and the entire amount of the loan shall at no time exceed, including the existing indebtedness of the district, in the aggregate ten per cent of the value of taxable tangible property therein, as shown by the last completed assessment for state and county purposes, the rate of interest to be agreed upon by the parties, but in no case to exceed the highest legal rate allowed by contract; when affected, it shall be the duty of the directors to provide for the collection of an annual tax sufficient to pay the interest on the indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within the time the principal becomes due."

Honorable Thomas G. Woolsey

Sections 26(a) and 26(b) of Article VI of the Constitution of Missouri, provide as follows:

"(a) No county, city, incorporated town or village, school district or other political corporation or subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this constitution.

"(b) Any county, city, incorporated town or village or other political corporation or subdivision of the state, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted in an amount not to exceed five per cent of the value of taxable tangible property therein as shown by the last completed assessment for state or county purposes, except that a school district by a vote of two-thirds of the qualified electors voting thereon may become indebted in an amount not to exceed ten per cent of the value of such taxable tangible property."

Under provisions of Section 26(b) of Article VI of the Constitution, political subdivisions are prohibited from becoming indebted in an amount greater than five per cent of the value of the taxable tangible property in such political subdivision. Section 198.200, RSMo Cum. Supp. 1963, provides that "when a nursing home district is organized, it shall be a body corporate and political subdivision of the state * * *." Since a nursing home district is a political subdivision of the state, the constitutional provision, Section 26(b) of Article VI, supra, prohibits such a district from becoming indebted in an amount greater than five per cent of the value of the taxable tangible property in such district.

Section 198.310 does not specifically authorize the incurring of an indebtedness to an amount of ten per cent

Honorable Thomas G Woolsey

of the taxable tangible property in a nursing home district but prohibits the incurring of such an indebtedness in excess of ten per cent of the value of a taxable tangible property in such district. This provision in section 198.310, which prohibits the incurring of an indebtedness in excess of ten per cent of the value of the property in a nursing home district is actually superfluous since the provisions of section 26 of Article VI of the Constitution of Missouri are self-enforcing and are read into the laws enacted by the Legislature authorizing the incurring of an indebtedness.

In the case of Thomas v. Buchanan County, 330 Mo. 627, 51 S.W. (2d) 95, the Supreme Court held that the provisions of Section 12 of Article X of the Constitution of Missouri, 1875, providing that political subdivisions shall not be allowed to become indebted to an amount in any year exceeding the income and revenue provided for such year without a vote of the people are self-enforcing and must be read into any statute relating to the incurring of an indebtedness by a political subdivision. The court in that case ruled on the validity of a "tax anticipation note" law and said, S.W. l.c. 99:

"This contention is not well founded because section 12, article 10, of the Constitution, is self-enforcing and must be read into the act. * * *"

The provisions of Section 12, Article X of the Constitution of 1875 referred to by the court in such case are now found in Section 26 of Article VI of the Constitution, supra.

In the case of State ex rel. v. Gordon, 251 Mo. 303, 158 S.W. 683, the Supreme Court held mandatory and self-enforcing the provisions of Sections 12 and 12(a) of Article X of the Constitution of 1875 which prohibited any subdivision therein named from incurring an indebtedness in excess of the income and revenue for any such year without the assent of two-thirds of the voters, and which provided that such indebtedness should in no event exceed ten per cent of the value of the taxable tangible property in such subdivision. In that case the City of Dexter voted general obligation bonds in the amount of \$53,000. The assessment of the taxable tangible property in such city was \$485,466. The court held that the state auditor should not register such bonds because the indebtedness of such city would be in excess of ten per cent of the value of the taxable tangible property in such city if the bonds

Honorable Thomas G. Woolsey

were registered and the court held that the bonds were, therefore, void. The court said, 251 Mo. l.c. 311:

"The action of the board not being in compliance with the Constitution, and the proposed indebtedness being in excess of the prescribed limit, the bonds are void. * * *"

The Supreme Court of the United States has held that state legislation cannot authorize the incurring of indebtedness in excess of that authorized by state constitutional provisions.

In the case of Buchanan v. Litchfield, 102 U.S. 278, the Supreme Court of the United States said, l.c. 288:

" * * * No legislation could confer upon a municipal corporation authority to contract indebtedness which the Constitution expressly declared it should not be allowed to incur. * * *"

In the case of Thornburg v. School Dist. No. 3, 175 Mo. 12, 75 S.W. 81, the Supreme Court of Missouri held that the purchaser of bonds of a school district, which bonds had been issued in excess of the constitutional limit, could not recover from the school district on such bonds. The court held that the school board, by its issuance of bonds in excess of the constitutional limits even though authorized by the voters of the school district, had entered into a contract that it was forbidden by the constitution to make and that no recovery could be had by the purchaser of the bonds. The court pointed out that the voters may not have been willing to vote a lesser amount of bonds for a schoolhouse.

In the case of Germania Savings Bank v. Darlington, 27 S.E. 846, the Supreme Court of South Carolina decided a case in which the state constitution provided a maximum debt limit for cities of eight per cent of the value of property in such cities. A statute authorizing aid to railroads by the Town of Darlington provided "and for such purposes the said mayor and aldermen may issue bonds and scrip in any amount". The court held the statute authorizing the issuance of bonds in any amount valid but held that the constitutional limitation on issuance of bonds was read into such statute. The court said, l.c. 858:

Honorable Thomas G. Woolsey

" * * * It is true that the act conferring the power to issue bonds does provide that the corporation may issue bonds in aid of railroads 'to any amount,' but, in order to avoid any conflict with the constitutional provision limiting the amount of the bonded debt of any town to 8 per centum of the assessed value of all the taxable property therein, that provision of the act must be qualified by such constitutional provision, and so read that the authority will be confined to the issue of bonds to any amount not exceeding the limit prescribed by the constitution, upon the well-settled principle that a statute will never be construed unconstitutional where it can be, in any possible way, reconciled with the provisions of the constitution. * * *"

We find not the slightest evidence of any legislative intent to make the creation of nursing home districts dependent upon the right of the voters of such district to authorize the issuance of bonds in excess of five per cent of the value of taxable tangible property in such district. So long as the voters themselves do not purport to authorize bonds in excess of the constitutional limit of five per cent of the value of the taxable tangible property in the district, there can be no question respecting the validity of such bonds.

Therefore, it is our view that nursing home districts are not authorized to incur an indebtedness by issuing bonds in an amount of ten per cent of the value of the taxable tangible property within a nursing home district. However, the district may issue bonds up to five per cent of the value of the taxable tangible property in such district when authorized by a two-thirds vote of the eligible voters in such district.

CONCLUSION

1. It is the opinion of this office that a nursing home district organized under provisions of Sections 198.210 to 198.350, RSMo Cum. Supp. 1963, may not issue bonds in an amount of ten per cent of the value of the taxable tangible property in such districts.

Honorable Thomas G. Woolsey

2. Nursing home districts may, when authorized by a two-thirds vote of the electors in the districts, validly issue bonds in an amount not in excess of five per cent of the value of the taxable tangible property in such districts.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, C. B. Burns, Jr.

Yours very truly,

THOMAS F. EAGLETON
Attorney General