

BONDS:  
LIBRARIES:  
CITIES, TOWNS & VILLAGES:  
CONSTITUTIONAL LAW:

A municipal library district has authority to issue general obligation bonds for the purchase of grounds or the erection of public library buildings or the improve-

ment of existing buildings when authorized by a vote of two-thirds of the qualified electors of the district voting thereon.

OPINION NO. 3

January 19, 1972

Mr. Charles O'Halloran  
State Librarian  
Missouri State Library  
308 East High Street  
Jefferson City, Missouri 65101



Dear Mr. O'Halloran:

This is in response to your request for an opinion regarding whether or not municipal library districts have the authority to issue general obligation bonds for the purpose of constructing library buildings and facilities within their districts.

Municipal library districts were created by Senate Substitute for House Bill No. 120 of the 73rd General Assembly. The purpose of this bill, specified therein, was:

" . . . to eliminate taxation of certain property which is now being taxed for the support and maintenance of a county library district and a city library or a public library supported and maintained by a school district and as of the effective date of this act, to permanently fix the geographical boundaries of both city and county library districts, and to preserve the territorial integrity of both city and county library districts."

One of the sections of S.S.H.B. No. 120 became §182.480, RSMo 1969 which states in part as follows:

" . . . the furnishing of free public library services to residents of the district, and the district shall be known as 'The city of . . . Municipal Library District', and each

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such district shall be a political subdivision of the state of Missouri and a body corporate with all the powers and rights of like or similar corporations, and as of the effective date of sections 182.130 and 182.480 to 182.510, all of the area or territory which is hereby included within a municipal library district shall be excluded from the boundaries of any existing county library district, and all of the taxable property located in the municipal library district shall only be subject to taxation by the municipal library district and shall hereafter not be subject to taxation by the county library district; . . ."

Section 182.480, RSMo 1969, established a "Municipal Library District" as "a political subdivision of the state of Missouri and a body corporate with all the powers and rights of like or similar corporations." Sections 182.480 through 182.510 governing "Municipal Library Districts" do not provide specific authorization for a "Municipal Library District" to issue general obligation bonds for the purpose of constructing library buildings and facilities within their districts and such specific authorization is not provided elsewhere within Missouri statutory law. It is, therefore, necessary to see if bond issue authorization can be found in the Missouri Constitution.

Article VI, Section 26(b), Constitution of Missouri, provides:

"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."

This section speaks in terms of political subdivisions being authorized to issue bonds. The critical question is whether it is a self-executing provision or must be given life through the passage of enabling legislation.

The Missouri Supreme Court, in State ex rel. City of Fulton v. Smith, 194 S.W.2d 302 (Mo. 1946), outlines the general law pertaining to the self-executing nature of constitutional provisions, l.c. 304:

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". . . 'One of the recognized rules is that a constitutional provision is not self-executing when it merely lays down general principles, but that it is self-executing if it supplies a sufficient rule by means of which the right which it grants may be enjoyed and protected, or the duty which it imposes may be enforced, without the aid of a legislative enactment. \* \* \* Another way of stating this general, governing principle is that a constitutional provision is self-executing if there is nothing to be done by the legislature to put it in operation. In other words, it must be regarded as self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the Constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action.' (Citations omitted). . . ."

In State ex rel. Clark County v. Hackmann, 218 S.W. 318 (Mo. 1920), the Court determined that Article X, Section 12, Constitution of Missouri 1875, was a self-executing provision as it related to the authority of Clark County to incur an indebtedness to raise money for the satisfaction of preexisting valid county indebtedness. Article X, Section 12, Constitution of Missouri 1875, read in part as follows:

"No county, city, town, township, school district or other political corporation or subdivision of the state shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose; nor in cases requiring such assent shall any indebtedness be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes, previous to the incurring of such indebtedness, . . ."

This section clearly parallels Article VI, Section 26(b), Constitution of Missouri 1945, although the authority to incur indebtedness is extended in a negative manner. In this regard, the Court stated l.c. 324:

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"Whilst section 12, art. 10, inhibits counties from contracting debts 'exceeding in any year the income and revenue provided for such year,' yet in addition to this inhibition is a grant of authority to contract in excess of the yearly income and revenue, with 'the assent of two-thirds of the voters thereof voting at an election to be held for that purpose.' . . ."

In concluding that Section 12 was self-executing and a grant of authority without the need of a legislative enactment, the Court stated l.c. 324:

". . . Under section 12 of article 10 of the Constitution counties have the power, by elections held for that purpose, to create debts for county public purposes. Note the authority is by elections. The requisite vote is prescribed, but the details of the election are not otherwise prescribed. Whilst section 12 of article 10 is a clear limitation on the power to create debts, and the power to increase taxes, it is likewise a grant of power to do both in a certain way and within a prescribed limit. There is no question of the limit in this case, because the debt is within the limit. The certain way is fixed, and that is by a vote of the people. The grant or right to determine the question by a vote of the people is fixed by this constitutional provision. . . ."

In State ex rel. Gilpin v. Smith, 96 S.W.2d 40 (Mo. 1936), the Court was again faced with making a decision as to the self-executing nature of Article X, Section 12, Constitution of Missouri 1875. The Court held that, l.c. 41:

"On the authority of the case of State ex rel. Clark County v. Hackmann, supra, we hold that section 12 of article 10 of our State Constitution is a self-enforcing grant of power permitting a county to incur indebtedness for a county public purpose if authorized by two-thirds of the voters of the county voting at an election on such proposition, if such indebtedness be within the amount permitted by the Constitution."

In both the Hackmann and Smith cases, the Court considered whether the purpose for which the indebtedness was to be incurred

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was a proper county purpose. Under Article VI, Section 26(b), Constitution of Missouri, no reference is made to the purpose of incurring indebtedness. It is, however, clear that Section 182.480, RSMo 1969, has created a political subdivision and given to it the purpose of "the furnishing of free public library services to residents of the district."

Several recent cases have dealt with the self-executing constitutional provision issued. In State v. Holman, 355 S.W.2d 946 (Mo. banc 1962), the municipality of Charleston contended that Section 23(a) of Article VI, Constitution of Missouri, was self-executing and authorized Charleston to issue general obligation bonds for industrial development purposes. In State v. Holman, supra, the Court concluded from the express wording of Section 23(a) that it was not self-enforcing and with regard to Section 23(a) observed, l.c. 950:

" . . . It grants to the city the privilege of creating indebtedness by popular vote in addition to four other such authorized purposes found in Article VI, but, in so doing, it also expressly limits that privilege to the purchase, construction, extension or improvement of plants to be leased or otherwise disposed of pursuant to law for manufacturing and industrial development. Relator tacitly concedes that, until the enabling act here in question became effective, there was no adequate and complete law whereby the city could proceed to incur indebtedness to be secured by the city's general obligation bonds for the very definitely limited purposes set forth in §23(a). . . ."

In Petition of Monroe City, 359 S.W.2d 706 (Mo. banc 1962), the Court held that Article VI, Section 27, Constitution of Missouri applicable to revenue bonds for industrial development purposes was not self-executing. The Court used the same basic rationale that was used in the Charleston case, supra.

'The instant situation is closely analogous to State v. Hackmann, supra, and State v. Smith, supra. Municipal library districts would look to Article VI, Section 26(b), Constitution of Missouri, for authority to issue bonds and Section 26(b) closely parallels the relevant portion of Article X, Section 12, Constitution of Missouri 1875, which the Supreme Court found to be self-executing.

The instant case is, on the other hand, clearly distinguishable from the Charleston and Monroe City cases. Sections 23(a)

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and 27 both involve potential grants of authority which at the time the cases were decided, were new and innovative, and as the Court stated in the Monroe City case, supra, l.c. 711:

" . . . We are unhesitatingly of the opinion that the mere expanding of §27 by the simple device of wedging (so to speak) words embodying such new concept into or between provisions previously interpreted as being self-executing does not compel that same interpretation as to the new matter so inserted. Nor are we willing to say that it should be so interpreted, this for the reason that this innovation by way of municipal financing of industrial projects is so new and untried, its possibilities so sweeping, and its operation and potentialities so utterly uncertain (and great) as to imperatively require statutory charting of its course. . . ."

In addition, Section 23(a) by it's language indicated the subject was referred to the legislature for action.

Section 26(b) of Article VI provides easily discernable guidelines within which the authority conferred can be regulated and said section obviously applies to political subdivisions such as "municipal library districts" authorized by Section 182.480, RSMo 1969.

Opinion No. 148 rendered May 29, 1969, to Senator Jack E. Gant, which held invalid Section 182.105, RSMo 1969, which authorizes issuance of general obligation bonds by a county library district is hereby withdrawn.

#### CONCLUSION

It is the opinion of this office that a municipal library district has authority to issue general obligation bonds for the purchase of grounds or the erection of public library buildings or the improvement of existing buildings when authorized by a vote of two-thirds of the qualified electors of the district voting thereon.

The foregoing opinion which I hereby approve was prepared by my assistant, Alfred C. Sikes.

Very truly yours,



JOHN C. DANFORTH  
Attorney General