

September 16, 1974

OPINION LETTER NO. 269
Answer by letter-Mittleman

Honorable William B. Waters
State Senator, District 17
First Office Building
17 West Kansas Street
Liberty, Missouri 64068



Dear Senator Waters:

This official opinion is issued in response to your request for a ruling on the following question:

"Whether or not cities of the Third or Fourth Class, or villages, may borrow money and pledge as security therefor federal grants to be made to said cities under the Major Disaster Declaration, Public Law 91-606."

You have stated the facts giving rise to this question as follows:

"Clay County, as well as other counties in the State of Missouri, were declared disaster areas by reason of the May, 1974 floods. These counties, as well as municipalities, then became entitled to federal financial assistance under the Major Disaster Declaration, Public Law 91-606.

"In administering the law the federal and state governments each inspect the area and arrive at a determination as to the amount of money to which the political subdivision is entitled. Shortly thereafter, one-half of that amount is paid to the governmental entity. The final one-half is not paid until the repairs have been completed, inspected and the expenditures audited. As a practical matter, this payment is not usually

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received until about eighteen months after the job has been completed.

"Because of the long delay in payment, both counties and cities have experienced great difficulty in finding contractors who are willing to do the job and then wait for eighteen months after it is finished before they are paid in full.

"The City of Excelsior Springs, a Third Class City, desires to meet this problem by borrowing money from one of the local banks and adopting a resolution which in effect pledges the final payment to come from the government, as security for a loan from the bank. Interest on the advancement would be paid from the city's general fund. Should it be determined that Excelsior Springs has this authority, other towns and villages in our county, as well as in other parts of the state, could very well follow this procedure. As it now stands, the lending agencies are reluctant to make the loan until the city's authority has been clarified."

Your question may be answered simply by stating that the Constitution and laws of Missouri make no provision for a municipal corporation to incur indebtedness in excess of its anticipated revenue for the current year and unencumbered balances from previous years by borrowing money from a bank pursuant to a resolution of the municipal governing body. You have informed us that the revenue which the City of Excelsior Springs expects to receive from the federal grants would not be received within the same year in which the indebtedness is to be contracted. Article VI, Section 26(a) of the Constitution of Missouri provides as follows:

"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."

Article VI, Section 26(b), provides as follows:

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"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."

It is clear from these constitutional provisions that a municipal corporation can only incur indebtedness in excess of the current year's anticipated revenue and unencumbered balances from previous years by a vote of its people, and not by resolution of its governing body.

In the case of Grand River Tp., De Kalb County v. Cooke Sales & Service, Inc., 267 S.W.2d 322, 325 (Mo. 1954), the Supreme Court held:

". . . Section 26 of Article VI of the Constitution prohibits any political subdivision of the state from becoming 'indebted in an amount exceeding in any year the income and revenue provided for such year', 26(a), except 'by vote of two-thirds of the qualified electors thereof voting thereon'. 26(b). It has been well established that this means no contract of such a political subdivision is valid which obligates it to make payments in subsequent calendar years. 'The plain meaning of this constitutional provision is that any such municipal corporation may spend or contract to spend (become indebted) "in any (calendar) year the income and revenue provided for such year," but beyond that it cannot go in creating a debt for any purpose or in any manner, except by consent of two-thirds of the voters.' Hawkins v. Cox, 334 Mo. 640, 66 S.W.2d 539, loc. cit. 543; see also Book v. Earl, 87 Mo. 246; Trask v. Livingston County, 210 Mo. 582, 109 S.W. 656, 37 L.R.A., N.S., 1045; Ebert v. Jackson County, Mo. Sup., 70 S.W.2d 918; Sager

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v. City of Stanberry, 336 Mo. 213, 78 S.W.2d
431; Missouri Toncan Culvert Co. v. Butler
County, 352 Mo. 1184, 181 S.W.2d 506. . . ."

Yours very truly,

JOHN C. DANFORTH
Attorney General