

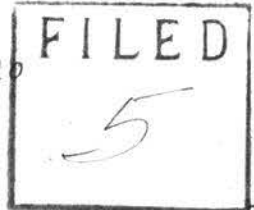
MUNICIPAL CORPORATIONS:

Cities of the 4th class not authorized to invest city funds in bonds of school districts.

*See 7010 R S No 1929*

June 16, 1933.

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Mr. R. Wilson Barrow,  
Prosecuting Attorney,  
Macon, Missouri.

Dear Sir:

We are acknowledging receipt of your letter of June 8, 1933, in which you inquire as follows:

"On behalf of John McFadden, Mayor of the City of Bevier, Mo., in this County, I am requesting an opinion from your department as to the legal authorization for the City of Bevier investing certain city moneys by the purchase of school bonds for the construction of a new high school building.

The Bevier city school building was recently destroyed by fire. It was necessary for the school district to vote additional bonds to construct a new building. The Bevier school district includes the city of Bevier and property contiguous to it for several miles around. Prior to the date of the school election to authorize the bonds, the Bevier city authorities indicated that in the event the bond issue was passed that they would purchase or invest in school bonds certain city money to the extent of \$5,000.00.

The Bevier city fund consists of the proceeds of sale of the electric lighting system of that town, which was sold several years ago to the Missouri Power & Light Company for \$10,000.00. This fund has since been used for various purposes, including the street improvement and other common fund purposes.

Will you kindly send me an opinion as to whether or not this transaction would be legal?"

A municipal corporation only has such powers as are expressly conferred by their charter, or are fairly and necessarily implied from the powers granted. As was said in *McMurry v. Kansas City*, 233 S. W. 615, 623:

"The powers of a city may be tersely stated as: (1) Those expressly granted by its charter; or (2) those fairly and necessarily implied from those granted; or (3)

those essential to the objects and purposes sought to be attained."

In *City of Maryville v. Farmers' Trust Company of Maryville*, 45 S. W. (2d), 103, 104, it is said:

"Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied."

The city seeks to invest a portion of its funds in school bonds of the Bevier school district. The school district is a separate and distinct entity from the municipal corporation, the City of Bevier. The City of Bevier does not have all powers except those which are expressly denied, but on the contrary, only has the powers expressly conferred under the rule laid down in the *McMurry* case above. Before a municipal corporation can use a city fund to make any investments or the particular investment in question, such power must be conferred by the Legislature. We have made a diligent search of the Statutes seeking to find some grant of power, either expressly or by implication, which would authorize a city to use its funds for the purpose of investment, but have been unable to find any grant of power whatever which, either expressly by implication, would give the city of Bevier the right to invest its city funds in the bonds of the school district. The Legislature must have deemed it unwise to permit this city to invest municipal funds without restriction, otherwise they would have made some provision therefor.

We are assuming that the city of Bevier still remains a city of the 4th class. Section 7010 R. S. Mo. 1929, provides for a city of the 4th class to select a depository wherein city funds may be deposited. The Section further provides as follows:

"And provided further, however, that if such depository cannot be selected, or such satisfactory arrangements made, such boards of aldermen are hereby empowered and authorized to loan such moneys upon the same terms and under the same conditions as provided by law for the loaning of county and school moneys."

The Sections regulating the loaning of county and school moneys are as follows: Section 13123 R. S. Mo. 1929, provides that county funds may be invested in bonds of the United States or of the State of Missouri. Section 13127 and Section 13128, R. S. Mo. 1929, provide that money may be loaned upon real estate secured by mortgage, and that a bond and personal security in addition thereto must be taken. Section 13188 provides for the loaning of capital school funds of the county according to law.

Mr. R. Wilson Barrow,

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June 16, 1933.

Section 7010 R. S. No. 1929, which is the only Section providing as to how city money may be loaned, does not give the city power to invest its funds in bonds of school districts. It provides expressly that such funds may be loaned, "upon the same terms and under the same conditions as provided by law for the loaning of county and school money." The Sections defining how the county shall loan and invest its money do not provide that such funds may be invested in bonds of school districts. The city may lend its funds in the manner provided in Section 7010, and in no other manner. An investment, such as is contemplated in your inquiry, is not a loan. Even if it could be construed to be a loan, it is not such a loan, as is authorized under said Section.

The object to be accomplished by the city is a commendable one, but regardless of how noble the purpose may be, the power to carry it out must be found in the city's charter, which is the Statutes. The power to make the investment in question cannot be found, either expressly or by implication. We, therefore, must rule that the city of Bevier is not authorized by the law of this State to invest its funds in the bonds of the Bevier school district.

Very truly yours,

  
Assistant Attorney General.

APPROVED:

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Attorney General.

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