

CITIES OF THE THIRD CLASS: Must issue Sewage Disposal Bonds under
Section 7276

September 24, 1933 ✓

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Hon. Hugh Miller,
State Engineer
705 Market Street
St. Louis, Missouri

Dear Mr. Miller:

Your request for an opinion of this office respecting the power of a city of the third class to-wit, the City of Aurora, Missouri, to issue bonds for the construction of a Disposal Plant has been received. Your request reading as follows:

"The City of Aurora has made application for a loan of \$25,000, including a grant of \$6,800, for the construction of a Sewage Disposal Plant.

The Advisory Board, upon considering this application, has suggested that the matter of bond security be placed before you for your opinion. The City cites Section 7276 Revised Statutes of Missouri, 1929, as its authority to construct a disposal plant and its obligation to pay for it. It then cites Section 6788 Revised Statutes of Missouri, 1929, as its authority for incurring a debt of 50% of its fiscal yearly revenue, offering a general obligation bond therefor for a one-year period, and at the expiration of that year propose to issue obligation bonds over a period of ten years.

In this particular case, Section 7276 apparently gives the authority and empowers the Council to construct the disposal plant. This may or may not be interpreted to imply the incurring of a debt therefor. This being a public health measure, may be sufficient legal grounds for the City to incur the debt and pay for it under the above mentioned Section 6788. The purpose

of the City of Aurora following this procedure, is to save any additional taxation on the citizens.

The financial structure of the City is sufficient to borrow money under this procedure, but an opinion from you is desired as to whether the first year bond and the funding bonds are legally safe as security."

We shall not directly deal with your inquiry as made for the reason that it is the opinion of this office that there is no authority in the City of Aurora to issue its general obligation bond for one year period under Section 6788 for the loan referred to in your inquiry.

Section 12 of Article 10 of the Constitution of Missouri limits the power of any city to incur indebtedness. Portions of said section reading as follows:

"SEC. 12. MUNICIPAL INDEBTEDNESS, LIMIT OF--HOW INCREASED--EXCEPTIONS AS TO CERTAIN CITIES.--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;" * * * "

By reason of the foregoing prohibition, the City of Aurora is prohibited from incurring any indebtedness in excess of one years revenue without an affirmative vote of two-thirds of the voters.

Section 6788 R. S. Mo. 1929, provides for the issuance of bonds by the Mayor and Council up to 50% of the current revenue. This section reads as follows:

"The council shall have the power to levy, annually, taxes upon all taxable property within the city, in addition

to other taxes, and in sufficient amount for the purpose of paying the interest and coupons as they become due on all bonds now issued and outstanding, and such taxes shall be collected in the same manner and time as other taxes. The mayor and council shall also have the power, by ordinance, to issue bonds, payable in one year, to an amount not exceeding half the current revenue for the fiscal year, and also to issue bonds in renewal of other bonds of the city maturing for the requisite amount, and which the city has no fund to pay: Provided, however, that such renewal bonds shall not bear any greater rate of interest than did the original bonds, and shall not run for a longer time than ten years. The mayor and council shall also have power by ordinance to issue bonds for the purpose of funding the floating indebtedness of the city existing at the time of its incorporation as a city of the third class: Provided, however, that such bonds shall not draw any greater rate of interest than six per cent per annum, payable semi-annually, and shall not run for a longer time than ten years."

In view of the constitutional provision hereinbefore referred to, this statute could not possibly be construed to authorize the City of Aurora to incur an indebtedness of 150% of its current revenue. It is our opinion that this section simply permits the city to anticipate up to 50% of its current revenue and does not attempt to authorize the incurring of a bonded indebtedness by the Mayor and Council without a vote of two-thirds of the voters of the city. Our position is confirmed by the remarks of Judge Graves in the case of Union Trust and Savings Bank vs. City of Sedalia, a decision of the Supreme Court reported at 254 S. W. 28. In this case some \$15,000.00 in bonds was issued under the authority of an ordinance passed, representing said bonds to be less than 50% of the current revenue. The Court on page 31 made this statement:

"This is the original law by which cities of the third class were authorized to anticipate and use their annual revenue in advance of its actual collection, by the issuance of current revenue bonds. They were referring to Section 70 of the Act

of the 37th General Assembly now Section
6788 R. S. Mo. 1939."

It would seem that the instant case is similar to that of Book vs. Earl, 87 Mo. 246. In this case Holt County contracted for the repair and remodeling of their court house at an expense of \$9600.00. Their annual revenue is \$28,000. However, all of said \$28,000 was appropriated to the pauper, road and bridge, county officer, jury and contingent fund, and while the \$9600, in itself was not in excess of the current revenue, the total indebtedness incurred was \$9600 over the current revenue. The Court enjoined the payment of the warrants to the contractor for the building of the court house and stated at page 352:

"If building three new additions to the court house and remodeling the same were, in their opinion, needful and expedient, the question as to whether or not a debt amounting to nearly ten thousand dollars in excess of all the revenue it was possible to raise to meet the ordinary and current expenses of the county should have been submitted to the qualified voters of the county, as required by sections 11 and 12 (Article 10) of the Constitution."

Now in considering Section 7276 R. S. Mo. 1939, it is our opinion that it is under this section that the legislature intended the improvements contemplated in your inquiry should be contracted for and paid for. Portions of this section reads as follows:

"SEC. 7276. AUTHORIZED AND EMPOWERED TO PROVIDE MEANS TO PROTECT PUBLIC HEALTH.-- In addition to all powers now possessed by cities of the second, third and fourth classes in this state for the protection of the public health, each city of the*** third, or fourth class of this state is hereby authorized and empowered ***** to acquire by any of such means a purification plant or plants or sewage disposal plant for the purification of all sewage accumulating in such cities. Such ****sewage disposal plant, may be acquired by such cities with funds derived from the issue and sale of bonds in the manner provided by law for the issue and sale

of bonds for other public purposes;
or such may enter into contract for
the construction or purchase of such
****disposal plant to be paid for out
of the general revenues of such cities
in annual installments:*****"

In this section the Legislature has specifically provided for the issuance of bonds for the purchase or construction of sewage disposal plants, and having directly and specifically legislated on the subject we feel that that in itself should be sufficient to bar the use of such a general section as Section 6788. We note the contention that the disposal plant may be considered as a public health measure and of such a nature as to constitute a demand upon the current revenues of the city for payment. However, we feel that the Legislature has specifically indicated the manner in which this improvement is to be made and having done so the law should be followed. The Legislature of course is clearly within its power to distinguish between these expenditures as stated in the case of Water Works Company vs. Carterville, 153 Mo. 128:

****It has been held in some courts of great ability that the supply of water is itself an item of current expenditure essential to the welfare of the municipality, but it was clearly within the province of the Legislature to distinguish also between these ordinary expenses, and prefer those for the support of the police and salaries of the necessary officers to enforce the powers conferred for the benefit of the State.*****"

We therefore are of the opinion that the Federal Government to be secure should require that this Disposal Plant be contracted for under the provisions of Section 7276 R. S. Mo. 1929.

Respectfully submitted,

HARRY G. WALTNER, JR.
Assistant Attorney General.