

FEDERAL AID - Authority to issue bonds for municipal improvements.

September 16, 1933.

Hon. H. A. Von Rump,
Mayor,
Rogersville, Missouri.



Dear Sir:

A request for an opinion has been received from you under date of September 6th, 1933, couched in the following terms:

"We, the City of Rogersville, population 408, anticipate the receipt of Federal aid in order to install City Water Works under the Federal Aid program.

With this in mind and under these conditions will you kindly advise us if we, the city, have authority under the state law to issue municipal bonds to cover this cost. We are incorporated as a 'town or village under class four'."

The Constitution of Missouri, Article X, Section 12 (a) provides as follows:

"Any city in this State, containing not more than thirty thousand (30,000) inhabitants, may, with the assent of two-thirds (2/3) of the voters thereof voting at an election held for that purpose, be allowed to become indebted in a larger amount than specified in section 12 of article 10 of the Constitution of this State, not exceeding an additional ten (10) per centum on the value of the taxable property therein, for the purpose of purchasing or constructing waterworks, * * * to be owned exclusively by the city so purchasing or constructing the same".

Revised Statutes of Missouri 1929, Sections 7029 and 7030, governing cities of the fourth class also provide for the borrowing of money up to the constitutional limit to cover the construction of waterworks and the issuance of municipal bonds to cover their cost, such statutes imposing no further restrictions material to your inquiry on cities of the fourth class. Thus, unless the issuance of such bonds would cause the municipal debt of the City of Rogersville to be in excess of the amount allowed by Section 12 of Article X of the Constitution of Missouri, which restricts the municipal debt of a city of the fourth class to five percent of the value of the taxable property therein and by Section 12 (a) of Article X of the Constitution of Missouri above quoted, which total maximum would be anything over fifteen per cent of the value of all of the taxable property in the City

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of Rogersville, no objection would exist under the laws of Missouri to the issuance of municipal bonds for the construction of such waterworks.

As to whether or not the fact that the City of Rogersville would receive funds from the United States to cover part of the construction of the waterworks would have any effect on the right to issue the bonds in question, it is provided in Section 6946 of the Revised Statutes of Missouri 1929 that:

"any city of the fourth class in this state * * * may receive bequests, gifts and donations of all kinds of property",

and it is further provided in Section 7029 of such statutes that the Board of Aldermen of a city of the fourth class

"shall have the right * * * to acquire by * * * donation * * * suitable grounds within or without the city, upon which to erect said works (i. e. waterworks) and the right-of-way to and from said works, and also the right-of-way for laying water pipes * * *."

Thus, by Section 6946, since no restriction is placed upon cities of the fourth class as to what persons may be the donors of gifts to such cities, no objection would exist to the receipt by the City of Rogersville from the United States as a gift of part or all of the funds for the construction of waterworks, and as to borrowing such money from the United States, the Constitution and Statutes of Missouri above quoted and cited place no restrictions on the persons or entities from which funds can be borrowed.

Under the Act of the Seventy-third Congress, approved June 16, 1933, H. R. 5755, commonly known as the "National Recovery Act", it is provided in Section 203 (d) that:

"The President, in his discretion, and under such terms as he may prescribe, may extend any of the benefits of this title to any State, county, or municipality, notwithstanding any constitutional or legal restriction or limitation on the right or power of such State, county, or municipality to borrow money or incur indebtedness."

The validity of this section of the National Recovery Act has not yet been settled by the courts, and if it should be upheld by the Supreme Court of the United States it would make any inquiry into the law of Missouri regarding the power of the City of Rogersville to borrow such money immaterial, but, as above stated, it is my opinion for the reasons set out above, that no objection exists under the law of Missouri to the issuance of the bonds which are the subject of your inquiry, unless the issuance of such bonds should bring the indebtedness of the City of Rogersville above the amount allowed by the Constitution of this state, and as to this latter question I am unable to

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express an opinion as no figures were furnished in your inquiry concerning the present indebtedness of the city or the amount to be incurred under the contemplated bond issue.

Very truly yours,

ASSISTANT ATTORNEY GENERAL

Approved:

ATTORNEY GENERAL