

PENAL INSTITUTIONS - Judgment bonds.

16-19
October 17, 1934



Honorable Stephen B. Hunter, Director
Department of Penal Commissioners
Jefferson City, Missouri

Dear Sir:

I am writing you with reference to the judgments heretofore obtained by the State Penal Board against Buchanan County. The dates and amounts of these judgments are as follows:

<u>Case No.</u>	<u>Title of Case</u>	<u>Date Judgment Obtained.</u>	<u>Amount of Judgment</u>
56060	Dept. Penal Inst. (Industrial Home for Girls)v. Buchanan Co.	1-19-34	\$4,354.26
56061	Dept. Penal Inst. (Mo. Reformatory) v. Buchanan County	3-9-34	\$10,936.13
56062	Dept. Penal Inst. (Industrial Home for Negro Girls) v. Bu- chanan County	1-19-34	\$285.14

We call your attention to Section 8316, Laws 1933, p. 327, which in part is as follows:

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"There is hereby created and established a department to be known as the Department of Penal Institutions, by which name it shall have perpetual succession, with the right to complain and defend in all courts; * * "

The counties of this state are liable for the support, maintenance, clothing and all other expenses of certain persons committed to the Reformatory (Section 8358, 8359, R. S. Mo. 1929), to the Industrial Home for Girls (Section 8372, R. S. Mo. 1929), and to the Industrial Home for Negro Girls (Section 8385 R. S. Mo. 1929). Upon the failure of the counties to meet these obligations, suits were instituted against Buchanan County and a judgment obtained in favor of the Department of Penal Institutions. The question now presented is whether or not Buchanan County bonds may be accepted in satisfaction of the judgments obtained.

Section 2892, Laws 1931, p. 138, is as follows:

"The various counties in this state for themselves as well as in behalf of any township or parts of townships for which said counties may have heretofore issued any bonds, and the several cities, villages, incorporated towns, school districts and road districts in this state, are hereby authorized by their respective county courts and the said cities, villages, incorporated towns, school districts and road districts by their proper authorities, to fund or refund any part or all of their bonded or judgment indebtedness, including bonds, coupons or any judgment, whether based on bonded or other indebtedness, and

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for that purpose may make, issue, negotiate, sell and deliver renewal, funding or refunding bonds, and with the proceeds thereof pay off, redeem and cancel such judgments or old bonds and coupons as the same mature or are called for redemption, or such renewal, funding or refunding bonds may be issued and delivered in exchange for the judgments, bonds or coupons to fund or refund which the renewal, funding or refunding bonds were issued: PROVIDED, that in no case shall the amount of the debt of any such county, township or parts of townships, or city, village, incorporated town, school district or road district be increased or enlarged under the provisions of this chapter, and provided also that no renewal, funding or refunding bonds issued under this chapter shall be payable in more than twenty years from the date thereof, and that such renewal, funding or refunding bonds shall be of the denomination of not more than one thousand dollars (\$1,000) nor less than one hundred dollars (\$100) each, and shall bear interest at a rate not to exceed six per centum (6%) per annum, payable annually or semi-annually, and to this end each bond shall have annexed thereto interest coupons, and such bonds and coupons shall be made payable to bearer: PROVIDED FURTHER, that nothing in sections 2892 to 2894, inclusive, shall be so construed as prohibiting any county, city, township, school district or road district from renewing, funding or refunding such debt without the submission of the question to a popular vote: PROVIDED, HOWEVER, that no indebtedness, judgment

or claim founded on bonds or coupons issued in the aid of or in payment for the capital stock of any railroad company shall be funded, nor shall any bonds be issued in lieu thereof or in compromise therefor until authorized by a majority of the qualified voters of such county, city, township or parts of townships voting at an election held for that purpose pursuant to an order entered of record by the county court of such county or council or aldermen of such city on petition of at least fifty of the resident taxpayers of such county, city or township, after public notice by advertisement in some weekly newspaper printed and published in such county or city, if there be such paper, and if not, then in such paper nearest to such county or city, setting forth the object of the election, for four weeks, and in addition posting up ten written or printed handbills in public places in such county or city, before the time for such proposition to fund its said indebtedness shall be voted on, which said notice shall contain the object and general nature of the proposition to fund said indebtedness. The election herein provided for shall be held in conformity with the statutes of the state covering state, county or municipal elections. And when such indebtedness^{has} been once compromised and funded, the funding bonds issued in lieu thereof may again be refunded according to the other provisions of this article without such election."

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It would appear from the foregoing statute that the authority to issue such bonds is placed with the county, and if such bonds are issued, you are required to accept such bonds in satisfaction of the judgment. These bonds are payable to bearer.

While not passing directly upon the validity of the section above set out, the right of the county to refund its judgment indebtedness by the issuance of bonds seems to be recognized. State ex rel. Clark County v. Hackmann, 280 Mo. 686; State ex rel. Johnson v. Railroad Company, 315 Mo. 430; State ex rel. Wayne County v. Hackmann, 272 Mo. 600.

We are assuming that the bonds issued by Buchanan County have been issued in accordance with the constitutional laws of this state.

It is the opinion of this office that Buchanan County has the authority to issue bonds in satisfaction of the judgments obtained against that county by the Department of Penal Institutions, and that the Department of Penal Institutions is required to accept such bonds in satisfaction of such judgments.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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