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ELEEMOSYNARY BOARD - Board may accept bonds of county in lieu of judgments against the county.

July 13, 1934.

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Honorable W. Ed Jameson, President
Board of Managers
Jefferson City, Missouri

Dear Mr. Jameson:

Your request for an opinion dated July 5, 1934 is acknowledged. Your letter is as follows:

"With reference to the enclosed letter from the Prosecuting Attorney in St. Joseph will state I would like to have some assurance from your office if possible that it will be all right for us to accept bonds for the accounts owing to the several eleemosynary institutions from Buchanan County. Some of these accounts have been reduced to judgment. Others are open accounts on the books of the several institutions.

I would be very glad if you will give me the benefit of your opinion in regard to this matter at an early date, and oblige."

Section 8636, Revised Statutes of Missouri, 1929, among other things, provides:

"The several county courts shall have power to send to a state hospital such of their insane poor as may be

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entitled to admission thereto. The counties thus sending shall pay semi-annually, in cash, in advance, such sums for the support and maintenance of their insane poor, as the board of managers may deem necessary, not exceeding eighteen dollars (\$18.00) per month for each patient; and in addition thereto the actual cost of their clothing and the expense of removal to and from the hospital, and if they shall die therein, for burial expenses; * * *

It is apparent from your letter and from the letter set out in the opinion which we wrote you on yesterday with reference to accepting the principal of the judgments rendered against Buchanan County in satisfaction of the judgment for principal and interest, that the provision of Section 8636, above set out, has not been complied with with reference to the payment for support and maintenance of the insane poor in cash. Hence, the Board of Managers of state eleemosynary institutions have proceeded, under Section 8615, Revised Statutes of Missouri, 1929, to secure judgments against the county for such sums except certain amounts still due and on which judgments have not been rendered.

The county having failed to make payments as required, and the judgments having been rendered, the question is, - What are the respective rights and duties of your Board and Buchanan County under the circumstances as they now exist? Section 2892, Revised Statutes of Missouri, 1929, as amended by Laws 1931, page 138, reads:

"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 or bonded or other indebtedness, and 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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The foregoing section would seem to give the counties of the state the affirmative right to issue and deliver funding or refunding bonds in exchange for judgment indebtedness. It does not seem to be a question of whether, in your case, you desire to accept the bonds in lieu of the judgments procured, but you are required to accept such bonds.

The letter of the Prosecuting Attorney of Buchanan County attached to your letter seems to imply that it is the purpose to issue the bonds payable to your Board as the holder of the judgments, but you will note that the section above set out requires the bonds to be made payable to bearer.

While not passing directly on 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 in 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.

What we said in our opinion to you on yesterday in reference to the acceptance of the principal amount of the judgment applies as well to the situation presented by your letter above set out as if you received the principal amounts of judgment in cash.

It is our opinion that the State Board of Elee-mosynary Institutions may accept the refunding bonds of Buchanan County in lieu of and as a cancellation of the judgments heretofore obtained by the State Board of Elee-mosynary Institutions against Buchanan County on account of the amounts due by such county for the support and main-tenance of its insane poor, but you are not entitled to accept bonds in lieu of open or outstanding accounts due by Buchanan County.

In expressing the above opinion, we have assumed that the bonds have been, or will be, issued in accordance

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with the Constitution and other laws of the State of Missouri.

We are preserving in our files the letter from the Prosecuting Attorney of Buchanan County attached to your letter.

This opinion will also serve as an answer to your letter to the Attorney General dated July 9, 1934.

Yours very truly,

GILBERT LAMB
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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