

TOWNSHIP ROAD BOND FUNDS:

Monies in hands of township trustee for use in paying principal and interest on road bonds cannot be invested but must be placed by trustee in bank on order of township board of directors.

9-10
September 8th, 1934.



Mr. John B. Owen,
Prosecuting Attorney, Henry County,
Clinton, Missouri.

Dear Sir:-

We have your letter of July 5, 1934, in which was contained a request for an opinion as follows:

"We have a situation in this county where a township has voted bonds for road purposes. All bonds have been paid as they became due. The township now has monies on hands with which additional bonds could be retired but the holders refuse to release unless paid a premium as their bonds are not yet subject to recall. The township does not want the money on hand in bank and are desirous of investing same pending time when the bonds are due. Can they do this and if so does the law provide for any special form of investment in such cases. They desire to put them in Government bonds but I am unable to find any authorization for such investment under Township Organization. Your opinion in the matter will be appreciated."

We assume that the bonds referred to in your letter are those provided for in sections 7960, 7961, 7962, 7963 and 7964, Revised Statutes of Missouri, 1929, and that the monies referred to are monies collected under the tax levied in accordance with section 7961 for the purpose of paying the principal and interest of such bonds as provided therein.

A careful search of the statutes has failed to reveal any provision authorizing the investment of such funds pending their payment on principal and interest of the bonds.

Article X, section 20, of the Constitution of Missouri provides as follows:

"The moneys arising from any loan, debt or liability, contracted by the State, or any county, city, town or other municipal corporation, shall be applied to the purposes for which they were obtained, or to the repayment of such debt or liability, and not otherwise."

Investment of such funds might not militate against the above provision but the matter is problematical. The chief difficulty is that there is no statutory or constitutional provision authorizing the investment of these funds, whereas, for instance, in the case of township school funds such is specifically provided (Sections 9250, 9251, R. S. Mo. 1929). There being no specific provision for the handling of such funds, they must be handled in the ordinary way as provided by statute.

Section 12291, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 12291. MONEY TO BE PAID OUT ONLY ON ORDER OF TOWNSHIP BOARD--SCHOOL DISTRICTS NOT AFFECTED.--The township trustee and ex officio treasurer shall not pay out any moneys belonging to the township for any purpose whatever, except upon the order of the township board of directors, signed by the chairman of said board and attested by the township clerk: Provided, that nothing in this chapter shall be so construed as to change or interfere with any school district, the boundary lines of which are different from that of the municipal township as organized under the provisions of this chapter, nor with the payment of any school moneys upon proper vouchers. He shall receive from the township collector and the county collector or treasurer all road and bridge and other taxes due the township when collected by such officers, and shall receipt for the same, and shall account therefor in like manner as for other moneys in his hands belonging to the township."

Section 12184, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 12184. DEPOSITARY OF COUNTY FUNDS.--HOW SELECTED.--It shall be the duty of the county court of each county in this state, at the May term thereof, in the year 1909, and every two years thereafter, to receive proposals from banking corporations, associations or individual bankers in such county as may desire to be selected as the depositaries of the funds

John B. Owen--#3

September 8th, 1934.

of said county. For the purpose of letting such funds, such county court shall, by order of record, divide said funds into not less than two nor more than ten equal parts, and the bids herein provided for may be for one or more of such parts. Notice that such bids will be received, shall be published by the clerk of said court twenty days before the commencement of said term in some newspaper published in said county, and if no newspaper be published therein, then such notice shall be published at the door of the courthouse of said county: Provided, that in counties operating under the township organization law of this state, township boards shall exercise the same powers and privileges with reference to township funds as are herein conferred upon county courts with reference to county funds at the same time and manner, except that township funds shall not be divided, but let as an entirety; provided, also, that in all cases of the letting of township funds, three notices, posted in three public places by the township clerk, will be a sufficient notice of such letting. (R.S. 1919, Sec. 9582)."

Under the above two sections the funds in question should, upon the order of the township board of directors, be placed in the designated bank by the township trustee. We have no choice but to so hold.

Very truly yours,

CHARLES M. HOWELL, Jr.
Assistant Attorney-General.

CMHjr-MB

APPROVED:

Attorney-General.