

STATE AUDITOR:)
REGISTRATION OF BONDS:)

Injunction suit without writ issued
does not prevent Auditor from register-
ing bonds.

5-21
May 31, 1934.



Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

This Department is in receipt of your letter of May 18th, 1934, with request for an opinion on the question submitted therein; which letter is as follows:

"The Missouri Utilities Company, a corporation, has filed a petition for injunction against the City of California, Missouri, a municipal corporation, the mayor, clerk, and members of the Board of Aldermen of said city, and Forrest Smith, State Auditor of Missouri, said petition being filed on May 15, 1934 in the Circuit Court of Moniteau County, Missouri; that said petition for injunction is returnable to the September Term, 1934, of said Circuit Court, commencing on the first Monday of September, 1934.

"The purpose of said petition for injunction is to enjoin Forrest Smith, State Auditor of Missouri, his assistants and employees from registering an issue of \$100,000.00 of bonds of the City of California, reported to be authorized by Ordinance #352 and Ordinance #354, passed and approved by the Board of Aldermen of the City of California and pursuant to an election held in said city.

"The bonds have not been presented for registration.

"The petition for injunction has been duly and properly served upon the State Auditor. I would appreciate your opinion as to whether or not the State Auditor of Missouri is bound to withhold the registration of the proposed issuance of bonds when presented, upon the mere serving of the petition for injunction, and in absence of any court order, temporary or permanent, having been served upon the State Auditor. Also whether or not the State Auditor would be held in contempt of Court, or be legally liable in any manner for registering said proposed issue of bonds, if, and when, in his opinion the transcript of proceedings and the bond form are in proper legal form and in full compliance with all of the laws relating thereto.

"It has been the policy of the State Auditing Department for many years to withhold the registration of bonds pending any litigation.

"I trust that we may have your opinion at the earliest possible date, for the reason that the City of California, Missouri is very insistent that our policy be changed, in order that they may fully comply with certain agreements entered into with the Federal government."

You have made a complete statement of the facts in your letter and you ask two questions based on said statement: (1) Whether or not the State Auditor of Missouri should withhold the registration of the proposed issuance of bonds when presented under the facts set forth in your letter, and (2) whether or not the State Auditor would be held in contempt of court, or be legally liable in any manner for registering said proposed issue of bonds, if, and when, in his opinion the transcript of proceedings and bond form are in proper legal form and in full compliance with all of the laws relating thereto.

Section 2915, R. S. No. 1929, provides as follows:

"Before any bond hereafter issued for any purpose whatever by any county, city, village, school district, township, special or common road district, or by any levee or drainage district organized and incorporated under the laws of this state, shall obtain validity or be negotiated, such bond shall be presented to the state auditor, who shall, if in the issuance thereof all of the conditions of the law have been complied with, register the same, in a book or books, to be provided for that purpose; and the auditor shall certify, by indorsement on such bond, that all the conditions of the laws have been complied with in its issuance, if such be the case, and that the evidence of that fact has been filed and preserved by him. But such certificate shall be prima facie evidence only of the facts therein stated, and shall not preclude nor prohibit any person from showing or proving the contrary in any suit or proceeding to test or determine the validity of such bond, or the power of the county court, city council, board of aldermen, board of trustees, school board, board of supervisors of any drainage or levee district, the board of commissioners of any special road district, or other authority, to issue such bond; and the remedy by injunction shall also lie at the instance of any taxpayer of the respective city, town, village, school district, township, special or common road district, levee or drainage district, to prevent the registration of any bonds alleged to be illegally issued or funded under any of the provisions of this article."

It is our opinion that this section means that upon a proper petition for injunction being filed in a court of competent jurisdiction by any taxpayer of the respective city, town, village, school district, township, special or common road district, levee

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or drainage district, may have the remedy by injunction to prevent the registration of any bonds, and the term "remedy by injunction" means a writ of injunction issued by the court or judge thereof, in vacation, having jurisdiction of the subject matter.

In the petition for injunction in question the plaintiff Missouri Utilities Company, a Corporation, has merely filed a petition in the Circuit Court of Moniteau County, Missouri, against the City of California, Missouri, a municipal corporation, and the Mayor and Board of Aldermen of said city, in which it has joined Forrest Smith, State Auditor of Missouri, as one of the defendants, and service has been had on you and you have been summoned to appear in the Circuit Court of Moniteau County to be begun and held on the first Monday in September, A. D. 1934, in said court.

In another petition for injunction the same plaintiff, Missouri Utilities Company, a Corporation, has filed a petition in the Circuit Court of Cole County against Forrest Smith, State Auditor of Missouri, and service has been had and you have been summoned to appear in the Circuit Court of Cole County, Missouri, to be begun and held on the first Monday in October, A. D. 1934.

The plaintiff, Missouri Utilities Company, a Corporation, in both of the above suits, as we understand, is the owner of a privately owned light plant at California, Missouri; in neither of said suits has the plaintiff asked for a temporary restraining order from the Circuit Courts of Moniteau County or Cole County, respectively, or from the Judge thereof, in vacation, having jurisdiction in Moniteau or Cole County, Missouri, and no writ of injunction, of course, has been issued, and no injunction bond has been given in either case as required by Section 1507, R. S. Mo. 1929. Therefore, you are not restrained, in taking whatever action you see fit, by the Circuit Courts or Judge thereof, in vacation.

We think that if, in your opinion, the transcript of proceedings and the bond form are in proper legal form and in full compliance with all the laws relating thereto that you may register said

Hon. Forrest Smith

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bonds notwithstanding the filing of the petitions for injunction and summons duly and properly served on you for your appearance at the next term of both the Moniteau County Circuit Court and the Cole County Circuit Court.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General

CRH:EG