

BANKS AND BANKING:

Township Boards not permitted under
the law to purchase Capital "B"
Notes.

3-21

March 19, 1934.



Honorable John D. Taylor
Keytesville
Missouri

Dear Mr. Taylor:

We are in receipt of your letter of recent date, with request for an opinion, which letter of request is as follows:

"As special counsel for the Township Board of Triplett, Township, I am submitting to you the following proposition for your opinion:

"The Triplett Bank, of Triplett, Missouri, is now operating under restrictions made by the State Finance Department. The assets of this bank total \$96,000.00. Among other deposits in the bank, there are county funds to the amount of \$3,000.00, school funds to the amount of \$3,000.00, and township funds to the amount of \$38,000.00, a total of \$44,000.00. This bank is not a legal depository for any of the above funds. Consequently, under existing court rulings, this amount would be treated as preferred claims in the event of liquidation.

"Recently, an application was made to the Federal Deposit Insurance Corporation for insurance on deposits, and an application made to sell Capital Notes

'A' and 'B' in order that the bank might operate without restrictions with interest on deposits. Application was made to the R. F. C. to buy capital notes, and it has been suggested that the R. F. C. buy capital notes to the amount of \$8,000.00, provided that Capital Notes 'B' to the amount of \$15,000.00 can be sold.

"This bank has solicited subscribers to the Capital 'B' notes and has procured the sale of \$10,000.00 of such notes. The only way that the remaining \$5,000.00 can be sold will be for Triplett Township to be a purchaser of Capital 'B' Notes to the amount of \$5,000.00.

"Past experience has shown, in the liquidation of banks in this county that have been liquidated, that the assets rarely produced in excess of forty per cent. of their face value.

"In the present instance, upon these figures, we could not hope to realize more than \$37,600.00, which would be \$6,400.00 less than the preferred claims would amount to. As a matter of good business, it would seem advisable for the Township Board of Triplett Township to accept Capital 'B' Notes to the amount of \$5,000.00 in order that this bank might operate without restrictions, which would be beneficial, not only to the township, but to all of the people of the community who have deposits therein. Under the Insurance Deposit Law, the township would not forfeit its preferential claim for the balance of the debt, yet this action would insure to the depositors, in amounts of \$2,500.00 and less, a full payment of their deposits in the event that liquidation would become necessary in the future.

"I am submitting to you this full statement of facts for your opinion on the following question:

"Can the Township Board, for the purpose of protecting and rendering available the balance of its deposits, become a purchaser of Capital 'B' Notes of this bank to the amount of \$5,000.00, using as the purchase price \$5,000.00 of its present restricted deposits?"

We note fully what you say in your statement of facts relative to the condition of the bank in question and the kind and character of the deposits therein, that is, that \$44,000.00 of this bank's deposits are public funds and in the depositing of these funds the School Districts, the County Court and the Township Board, and the bank, according to your statement have not complied with the law relative to the selection of public depositories, and that the bank therefore is not a legal depository under the existing rulings and in the event of liquidation, these deposits would be treated as preferred claims.

At the special session of the Fifty-Seventh General Assembly, 1933, Sections 5312, 13, 14 and 15 of Article I of Chapter 34, R. S. 1929 were repealed, and four new sections were enacted in lieu thereof to be known as Sections 5312, 13, 14 and 15. These new sections authorize banks and trust companies, whose capital have been impaired, to issue capital notes; that is, creating new liabilities against the capital of the bank. As a practical business proposition said notes have been divided into two classes, Capital "A" Notes and Capital "B" Notes. The Capital "A" Notes being superior to the Capital "B" Notes.

Your question is, can the township board purchase \$5,000.00 of Capital "B" Notes, using as the purchase price thereof \$5,000.00 being a part of its present restricted deposits in said bank. As we view it this question resolves itself into a strictly legal proposition, that is, may the township board of directors, as officers of the township, purchase these notes under the conditions set forth in your letter.

Section 12256, R. S. 1929, sets forth the powers of

townships, which section is as follows:

"Each township, as a body corporate, shall have power and capacity: First, to sue and be sued, in the manner provided by the laws of this state; second, to purchase and hold real estate within its own limits for the use of its inhabitants, subject to the power of the general assembly; third, to make such contracts, purchase and hold personal property, and so much thereof as may be necessary to the exercise of its corporate or administrative powers; fourth, to make such orders for the disposition, regulation or use of its corporate property as may be conducive to the interest of the inhabitants thereof; fifth, to purchase at any public sale, for the use of said township, any real estate which may be necessary to secure any debt to said township, or the inhabitants thereof, in their corporate capacity, and to dispose of the same."

And Section 12357, R. S. 1929, places restrictions upon the corporate powers of the township board, and is as follows:

"No township shall possess any corporate powers, except such as are enumerated or granted by this chapter, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or granted."

Members of the Township Board are officers of limited powers and their powers are similar to the county court as being the agents of the township in the transaction of the township's business, as the county court is agent for the county in the transaction of the county's business.

In 15. Corpus Juris, at page 540, it says:

"A county is not bound by a contract beyond the scope of its powers or foreign to its purposes, or which is outside the authority of the officers making it. In this connection it is the rule that the authority of a county board to make contracts is strictly limited to that conferred, either expressly or impliedly, by statute, regardless of benefit to the county or of value received; and the same is true as to other county officers attempting to contract in behalf of the county.
* * * *

As bearing on this question, we quote from the following Missouri cases:

* * * * As County Courts are only the agents of the county, with no powers except what are granted, defined and limited by law, like all other agents they must pursue their authority and act within the scope of their powers.
* * * * (Steines et al. v. Franklin County et al., 48 Mo. 1.c. 177.)

"The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void. Saline County v. Wilson, 61 Mo. 237; Welcott v. Lawrence County, 36 Mo. 275; Steines v. Franklin County, 48 Mo. 167. Persons dealing with such agents are bound to take notice of their powers and authority.
* * * * . (Sturgeon V. Hampton, 88 Mo. 1.c. 213, 214.)

"This court, in numerous cases, has repeatedly held, that the county courts of the respective counties of the State are not the general agents of the counties of the State. They are courts of limited jurisdictions, with powers well defined and limited by the laws of the State; and as has been well said, the statutes of the State constitute their warrant of authority, and when they act outside of and beyond their statutory authority, their acts are null and void.

"Consequently, this court has also repeatedly held, that all persons while dealing with said courts or agents are bound to take notice of their powers and authority." (Bayless v. Gibbs, 251 Mo. 506.)

From the statement in your letter, \$44,000.00 of the deposits in this bank are public funds respectively - \$3,000.00 county funds, \$3,000.00 school funds and \$38,000.00 township funds - all of said funds being deposited in said bank without compliance with the statutory method in the selection of public depositaries, and the bank is not the legal depository of the respective political subdivisions; and, in the event of liquidation would be treated as preferred claims against the bank.

The immediate effect of the purchasing of Capital "B" Notes of the Township would be the changing of the position of the township as to the \$5,000.00, in the event of liquidation, from a preferred claim to a lower classification. The liability of the bank to its creditors would be in the following order:

- First, - Preferred Claims;
- Second, - Common Depositors;
- Third, - Capital "A" Notes;
- Fourth, - Capital "B" Notes;
- Fifth, - Capital Stock Liabilities .

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If Triplett Township can legally purchase \$5,000.00 of Capital "B" Notes, it can purchase an amount of said notes equal to its deposit in said bank, that is, the entire \$38,000.00 of township deposits, if said deposit belong to Triplett Township, and the school district could use its \$3,000.00 or any amount thereof for said purposes, and the county funds could also be used for said purpose. We do not think that public officers as agents of their respective political subdivisions can legally, under the circumstances as outlined in your letter, invest their funds in such securities.

It is therefore our opinion that the Township Board of Triplett Township can not legally purchase \$5,000.00 of Capital "B" Notes of the Triplett Bank of Triplett, Missouri, using as the purchase price \$5,000.00 of its present restricted deposits in said bank.

Respectfully submitted,

GOVELL R. HEWITT
Assistant Attorney-General,

APPROVED:

ROY McKITTRICK,
Attorney-General.

GRH:afj