

4.26  
April 20, 1935.



Hon. Forrest Smith  
State Auditor  
Jefferson City, Missouri

Dear Mr. Smith:

This is to acknowledge receipt of your letter of April 12, 1935, a copy of which is attached to this opinion.

We note in your letter that Judge Sevier on October 15, 1934, in the case of E. B. Allen v. Forrest Smith, State Auditor, in the Circuit Court of Cole County, Missouri, granted a temporary writ of injunction restraining the State Auditor from registering the electric light bonds of the City of Laclede voted at an election held on May 3, 1932. On February 5, 1935, while said temporary writ of injunction was in full force and effect, a petition for a writ of prohibition was filed in the Supreme Court of the State of Missouri, entitled State of Missouri at the relation and to the use of Forrest Smith, State Auditor, v. Nike Sevier, Judge of the Circuit Court of Cole County, Missouri, and E. B. Allen, to prohibit Judge Sevier from proceeding further with the case of E. B. Allen v. Forrest Smith, State Auditor, and a writ of prohibition was granted by the Supreme Court on February 5, 1935. The alternative writ of prohibition issued by the Supreme Court commanded Sevier, Judge, to take no further action in the first described cause until the further order of the Supreme Court.

We have read the petition in the case of E. B. Allen v. Forrest Smith, State Auditor, filed in the Circuit Court of Cole County, Missouri, in which case the plaintiff raised many questions as to why the bonds mentioned in said petition were illegally issued and should not be registered.

April 20, 1935.

Recently, bonds in the sum of \$12,000.00 issued by the City of Laclede, based on the election of May 3, 1932, and described in your letter, were presented by representatives of that City for the purpose of registration. The question about which you inquire is whether or not these new bonds should now be registered by you in view of the restraining order heretofore issued by Judge Sevier on October 15, 1934, and what effect, if any, the writ of prohibition issued by the Supreme Court has upon said temporary writ of injunction issued aforesaid.

The prohibition case is set for hearing before the Supreme Court, Division No. 2, at the May Term, to-wit, May 17, 1935; the pleadings having been made up on the petition of relator and demurrer of the respondent. The alternative writ which has been served in the case operates as a prohibition until the further order of this court and preserves the existing status of the proceedings. The writ of prohibition in this case does not set aside previous orders made by the lower court but only prohibits the lower court from proceeding further in the case.

It is our opinion that the bonds recently presented to you for registration cannot be registered by you so long as the temporary writ of injunction issued by Judge Sevier is in force and effect, and it is our further opinion that the alternative writ of prohibition issued by the Supreme Court does not have the effect of dissolving the temporary writ.

We deem it unnecessary to pass on the question of the liability of the State Auditor on his official bond for the reason that the question now involved is -- What should he do under the present status of the legal proceedings?

We, therefore, are of the opinion that the bonds in question should not now be registered by you.

Very truly yours,

APPROVED:

COVELL R. HEWITT  
Assistant Attorney-General

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ROY MCKITTRICK  
Attorney-General

CRH:EG  
Enc.