

CITIES - Assent of two-thirds of voters required to incur indebtedness in excess of annual income.

November 23, 1935

11-25



Honorable Roscoe C. Summers
Attorney and Counselor
Dallas Building
Pleasant Hill, Missouri

Dear Sir:

We have your request of October 31, 1935 for an opinion, which in part is as follows:

"Will you let me know right away what your opinion is with reference to cities under Special charter, such as the City of Pleasant Hill, Missouri, purchasing real estate within the city limits for park purposes without a vote of the citizens, and without any annual tax for upkeep of the park, which is not necessary when the city has sufficient revenue annually to pay the purchase price, and upkeep, citing you Section 14238, Revised Statutes of Missouri, 1929, and also Article Ten, Section 12 and 12a, State Constitution, stating 10% of the taxable property values as ascertained by the assessment next before the last assessment for state and county purposes previous to incurring the indebtedness."

From your letter, we assume that the city does not have sufficient cash in its surplus account to pay the entire purchase price of \$4,000.00 for the desired park, but could, from the surplus city revenue, pay for such park over a period of

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years. At the moment the city purchases the lot for \$4,000.00, it would become indebted at that time to the extent of the purchase price, which, according to your letter, would be in excess of the current revenue for the year.

Section 7217, R. S. Mo. 1929, being applicable to all cities and towns, among other things, provides:

"The various cities, towns and villages in this state, whether organized by special charter or under the general laws of the state, may contract a debt or debts in excess of the annual income and revenue for any such year * upon the assent of two-thirds of the legal voters of such city, town or village voting at an election held for that purpose:
* * "

Article X, Section 12 of the Missouri Constitution prohibits any city or town from becoming indebted in any manner for an amount exceeding in any year the income of revenue provided for such year, without the consent of two-thirds of the voters thereof.

We quote from Ebert v. Jackson County (1934) 70 S. W. (2d) 918, l.c. 920, facts similar to the one involved, with the ruling of the court thereon:

"In the instant case the contract was not executory and contingent. It purports to bind the county to pay plaintiff \$4,320 for the use of the room for four years, beginning August 1, 1925, payable \$90 on the first day of each month, in advance. These payments were to be paid from the income and revenue of future years as well as from the income and revenue provided for the year the contract became effective. It was an unconditional

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promise made by the county on July 18, 1925, to pay the rent in advance on the first day of each month for four years. The payment of the rent was not contingent upon the occupancy of the room by the justice or on plaintiff's furnishing it to the county for that purpose.

"The contract was an effort to anticipate the income and revenue of the county for several years following the year the contract became effective. It created a debt within the meaning of said section of the Constitution, and is void."

Whether the park is attempted to be purchased by a monthly rental or the payment of a sum by way of a lease, the entire purchase price becomes a debt of the city within the meaning of the above constitutional provision. In a recent case, Sager v. City of Stanberry, 78 S. W. (2d) 431, the city attempted to purchase generating equipment, the purchase price to be paid in installments, called rentals, the Supreme Court held that the total purchase price created an indebtedness which required the assent of two-thirds of the voters thereof.

It is, therefore, the opinion of this office that the city of Pleasant Hill is without authority to purchase the park in question on the installment plan, and that within the limitation of the indebtedness provisions of the Constitution, the city can only purchase the park with the assent of two-thirds of the voters.

Yours very truly,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

FER:FR