

DRAINAGE DISTRICTS--COUNTY COURT--BONDS: Treasurer of Drainage Districts should promptly disburse funds in retirement of outstanding bonds which are due and payable, in spite of the County Court's order to the contrary.

October 8, 1935

Honorable W. P. Wilkerson
Prosecuting Attorney
Scott County
Benton, Missouri



Dear Sir:

We acknowledge your request for an opinion dated September 10, 1935, which reads as follows:

"It seems that before the term of office of the present Treasurer of this county, and also before my term began, the County Court of this County entered an order of record, directing the Treasurer to impound all the funds then on hand and thereafter collected, belonging to certain drainage districts organized and existing under the law regulating districts organized by the County Court, said impounding of funds to continue until lifted by said County Court.

"Upon assuming the moluments and responsibility of office, the present Treasurer asked by opinion as to whether he is required to honor the aforementioned order of the County Court, or whether he should pay any bonds and coupons that were presented for payment, according to law, against the districts which have funds in his hands in the absence of mandamus proceedings and the adjudication of the question in the Circuit Court.

"The County Court has employed counsel for these districts, who, I understand is attempting to refinance the said districts with funds proposed

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to be borrowed from the Reconstruction Finance Corporation, presumably under the authority of Sec. 11022, page 3660, M. S. A. and Sec. 10829a, page 3551, M. S. A., and I understand that it was in connection with this proposed refinancing of these districts that the order was made.

"Will you please advise me whether, in your opinion, the order impounding the funds is legal and valid and binding upon the Treasurer, stating whether the solvency or insolvency of the district would make any difference, if, in your opinion, it does make a difference? None of the districts have been adjudicated insolvent. One probably is, in fact, insolvent, and would be so adjudicated if the matter were handled properly.

You indicated in your letter that the drainage districts in question were originally organized under Article II, Chapter 64, R. S. Mo. 1929. This we assume to be a fact. It is by virtue of this Article that a County Court can incorporate drainage districts. Section 10814 R. S. Mo. 1929 provides in part as follows:

"* * * * If the court finds in favor of making the improvement, it shall, by order of record, incorporate the land and other property described in the report of the viewers and engineer or any part thereof into a drainage district for the purpose of this article, and shall designate the same by number. Such district shall be a body corporate and a political subdivision of the state, shall possess the usual powers of a corporation for public purposes, shall be capable of suing and being sued in its corporate name and shall be capable of holding such real and personal prop-

erty as may be at any time either donated to or acquired by it in accordance with the provisions of this article or of which it may be rightfully possessed at the time of the passage of this article. If the court shall find against the improvement, it shall dismiss the petition and proceedings at the cost of the petitioners, and shall issue an itemized bill of all costs and expenses, in like manner and with like effect as fee bills are issued by the clerk of the circuit court."

You indicated by your letter, and we assume it to be a fact, that the duly incorporated drainage districts issued funding bonds pursuant to the provisions of Section 10829, which provides in part as follows:

"The county court may issue bonds for and on behalf of any drainage district created under this article, for the purpose of paying the cost of the completion of improvement as located, described and set forth in the report of the viewers and engineer, as confirmed by the county court and the payment of all duly authorized expenses incident thereto. * * * *

"Bonds issued hereunder shall be signed and delivered to the county treasurer and shall be sold by him, with the consent and approval of the court, at not less than 95 per cent. of the par value plus accrued interest. Said bonds may be prepared, dated and executed at one time and when delivered for value in accordance with the terms of the contract of purchase shall be held to be the obligations of the district though executed by officials other than those in office at the time of delivery for value: Provided, the officials signing them were such officials at the time the bonds were signed. Said bonds shall

show upon their face the purpose for which they are issued and the principal and interest thereof shall be payable from the proceeds of the taxes levied upon the land and other property in the drainage district as hereinbefore provided. At the times any bonds are issued, a sufficient amount of the said drainage taxes shall be set aside and appropriated to pay the principal and interest of said bonds and it shall be the duty of the county court to arrange and determine the annual installments of said taxes so as to provide funds in due time for the payment at maturity of the principal and interest of any bond authorized and issued hereunder.

The proceeds of any taxes so appropriated shall be used for the purpose of paying the principal and interest of said bonds and no other.

If necessary to promptly pay said bonds and the interest thereon the county court shall rearrange the schedule of annual installments made at the time the taxes were levied and shall also make such additional tax levies as are necessary and shall provide for the collection of the same at such times as will produce the required amounts. Under no circumstances shall the county court make any tax levies which will in any manner, or to any extent, impair the security of the bonds issued hereunder or the fund available for the payment of the principal and interest of the same. Bonds and coupons not paid at maturity shall bear interest at the rate of 6 per cent. per annum until paid. * * * *

Section 10832 R. S. Mo. 1929, provides in part as follows:

"The treasurer of the county in which a drainage district is located shall

act as treasurer of the district and shall be the custodian of the funds of the district, except as otherwise provided in this article. He shall receive and receipt for all such funds and shall enter into a separate bond for each district in the county in a sum to be fixed by the court, not less than the probable amount of funds of said district to be in his possession at any one time. Such bond shall be payable to the district, shall be approved by the court, shall be signed by two or more resident freeholders in the county or by a surety company authorized to transact business in the state and shall be conditioned for the faithful and prompt disbursement according to law of all such funds as shall from time to time be in his possession. * * * *"

Section 10827 R. S. Mo. 1929, provides how your County Treasurer became possessed of this money belonging to the drainage districts which the County Court has attempted to impound and provides in part as follows:

" * * * * The 'drainage tax book' shall be the warrant and authority of the collector for making such demand and collection. The said collector shall pay over and account for all moneys collected thereon each year to the county treasurer at the time he pays over state and county taxes. * * * *"

Section 10842 R. S. Mo. 1929 provides as follows:

"When the improvements of a district have been completed and paid for, and all costs and expenses of the district paid, if there remains on hands to the credit of such district any funds not needed, the county court may prorate back to the taxpayers all or any part of such funds not needed or may use the same for maintenance in lieu of maintenance taxes."

In the case of Little River Drainage District v. Lassater, 29 S. W. (2d) 716 l. c. 719, the Supreme Court said:

"It would seem that, in collecting taxes for drainage districts, even though such drainage district might include the entire territory of the county, county collectors would be performing no duties or functions of their offices as county collectors. In performing these duties they are agents and officers of and perform them for such districts."

Article X, Section 20 of the Missouri Constitution provides:

"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."

In the case of Houck v. Little River Drainage District, 248 Mo. 373, l. c. 382; 154 S. W. 739, the Supreme Court of Missouri said:

"That the State, by the Legislature, has the power to create corporations for the purpose of reclaiming or improving swamp and overflowed land by ditches and drains and levies, in districts prescribed by it, or to be ascertained and fixed by such appropriate instrumentalities as it may provide, is no longer a question in this State. Nor is it an open question that the instrumentality so created may be invested with all the necessary power and authority to construct and maintain whatever works may be necessary to accomplish such object, and to raise the funds to pay for the same by assessment on the lands to be benefited thereby. * * * * These

corporations, as is said in the most of the cases cited, are, when formed, public subdivisions of the State, exercising the powers granted them for the purposes of their creation, within their territorial jurisdiction, as fully, and by the same authority, as the municipal corporations of the State exercise the powers vested by their charters."

In the case of *People v. Wylie*, 283 Illinois 515; 119 N. E. 585, l. c. 587, under an Illinois Statute making the Treasurer of the drainage district the dispenser of drainage funds, the Court said:

"The acts of a treasurer are ministerial in the sense that if an order is drawn in accordance with the statute from a fund from which it is payable, if there is money in the fund, he has no discretion as to payment unless he has notice that the order is not legally chargeable to the fund, but he may, and should, refuse to pay orders known by him to be drawn for claims not authorized by law or for expenditures not within the power of the board. In this case the appellant participated in the illegal act and knew that the orders were illegally drawn."

Again in *Dewey v. Niagara County*, 62 New York, 294, a case decided upon identical statutes as the Missouri Statutes in issue, that Court said at l. c. 297:

"The county of Niagara, or its board of supervisors, had no direction of the work contemplated by the act or discretion in respect thereto, or the levy and collection of the assessment for the expenses. It exercised an agency under the act at the instance of the commissioners in the assessment upon individuals, the owners of lands, and the collection of the sums estimated and assessed upon the lands by the commissioners. The responsible actors were the commissioners; and the duty

performed by the board of supervisors was in their aid, and to give effect to their work. The county treasurer, in the receipt and disbursement of the moneys collected upon that special assessment, acted not as the agent and treasurer of the county but as the fiscal agent and treasurer of the commissioners. The moneys were not county moneys or applicable to county purposes. They were not, in fact, applied or paid out for the use of the county, but upon the vouchers of the commissioners and pursuant to the statutes. The defendant, or its governing body or financial officers, had no control over or possession of the funds thus raised, or any use of or benefit from it. The money paid by the plaintiff upon the assessment by the commissioners did not go into the treasury of the county and was never, in any sense, received or appropriated by, or in the possession of the defendant. There would be evident injustice in compelling the body of the county to indemnify the plaintiff against the irregularities of the statutory commissioners appointed for a local and not for a county purpose, and in no way representing the county or acting in its behalf."

In the case of *State v. Hortsman*, 50 S. W. 811; 149 Mo. 290, the Supreme Court of Missouri said at l. c. 296:

"The respondents correctly interpret the law that when they made the assessment and caused it to be levied and made the order appropriating it for the purposes for which it was levied, their duty was ended, and the duty and responsibility of disbursement was on the county treasurer."

In the case of Bayless v. Gibbs, 251 Mo. 492, 1. c. 506; 158 S. W. 590, our Supreme Court said:

"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."

CONCLUSION.

We find nothing in the Statutes specifically authorizing the County Court of Scott County with power to impound drainage funds in the custody of the County Treasurer acting as ex officio treasurer of the drainage district. We are of the opinion that the County Court had no actual or implied power to make such an order. The fact that these public corporations have become insolvent since incorporation, and the Reconstruction Finance Corporation is being petitioned for financial aid, does not legally justify a void order of any County Court, nor does that reason give validity to an order made beyond the power of the County Court, under the Constitution and Statutes.

These drainage districts were incorporated under the law allowing County Courts to so incorporate. They were incorporated for a definite purpose and bonds were sold to expedite the purpose. Money was assessed, levied and collected, which under our Constitution and drainage Statutes is earmarked as money to be used for retiring said funding bonds. The Legislature has provided that the County Treasurer be custodian and dispenser of this money marked with this trust and has made him the ministerial officer to perform the statutory duty prescribed, and this is true, even though his duties have no connection

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with his official duties as County Treasurer, but are merely incidental to that office. The Courts have already held that the County Collector in collecting drainage tax is performing no duty of County Collector. In handling drainage money the Treasurer is bonded to the drainage corporation and not to the County. The bonds are not County bonds. When the Legislature gave him statutory power to "disburse", it is not reasonable to imply that other county officers can make legal orders controlling this disbursement directing the Treasurer to disobey the law and violate contractual obligations evidenced by outstanding drainage bonds. He is the agent for the drainage district and not the County Court.

In the absence of adjudication of the question presented, we are of the opinion that the Treasurer should disburse this money on outstanding bonds when legally presented to him for payment. He is bonded for "the faithful and prompt disbursement of all such funds as shall from time to time be in his possession." The County Court by the drainage act itself is given power to expedite prompt payment on said bonds, and after payment in full is authorized to prorate back all surplus, but by no word or implication did the Legislature authorize them to hinder payment as per their order outlined in your request.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

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