

ROADS AND BRIDGES: Bond proposition for road purposes cannot be submitted to part of a township - whole of township must vote for issuance of bonds.

September 22, 1936. 9-24



Honorable Gilbert Barlow,
Prosecuting Attorney,
Harrison County,
Bethany, Missouri.

Dear Sir:

This department is in receipt of your letter of September 9, requesting an opinion as to the following:

"In view of Sections 7960-61-62-63 and 64, R.S. Mo. 1929, the west 3/5 of Jefferson Township, Harrison County, Mo. desires to vote bonds for road purposes to carry out a WPA project.

"Big Creek runs north and south across said township, leaving about 2/5 of the township on the east side of said creek, and this 2/5, or approximately that amount, is included in JH Special Road District now covering U.S. 69 from Bethany north to Iowa-Missouri State line. No bonds are unpaid on the Special Road District. These parties on the east side of the creek have their road running north and south through said township and apparently would not be in favor of voting road bonds covering the whole township. Should a bond proposition for road purposes to build the road on the west 3/5 of the township be submitted to a vote on the whole township, or to that part of the township not in the Special Road District?

"I have advised that the proposition should be submitted to the whole township. March 3, 1923 the Supreme Court En Banc held the

township in a special road district was precluded from voting bonds; 249 S.W. 71, State ex rel. Jackson, et al. vs. Hackman, State Auditor. After that decision, the then Sec. 10751 of R.S. 1919 was amended April 4, 1923, Laws, page 356, now Sec. 7964.

"Please advise if I am correct and give your construction of these sections. This section, it seems, should be amended to let the remaining part of the township vote bonds if it so desires on its property."

The chief statute relating to your question is Section 7964, R.S. Mo. 1929, which is as follows:

"The four next preceding sections, to-wit, sections 7960, 7961, 7962 and 7963, R.S. 1929, shall not apply to any township, the whole or any part of which is included in a special road district that has issued bonds, the whole or any part of which are outstanding and unpaid; nor shall said sections apply to any special road district which includes the whole or any part of any township which has issued bonds for road purposes, the whole or any part of which bonds are outstanding and unpaid, nor shall said sections apply to any special road district which includes the whole or any part of the territory of any other special road district which has incurred an indebtedness evidenced by an issue of bonds, the whole or any part of which are outstanding and unpaid."

Section 7960, R.S. Mo. 1929 gives the county courts of the several counties, on behalf of any township therein, the right to issue bonds, and is as follows:

"The board of commissioners of any special road district organized and incorporated under the laws of this state, for and on behalf of such district, and the county courts of the

several counties, on behalf of any township in their respective counties, are hereby authorized to issue road bonds to an amount, including existing indebtedness, not exceeding five per centum of the assessed valuation of such special road district or township, as the case may be, to be ascertained by the assessment next before the last assessment for state and county purposes. Such bonds shall be issued in denominations of one hundred dollars or some multiple thereof, to bear interest at not exceeding six per centum per annum, payable semi-annually, and to become due and payable at such times as the board of commissioners or county courts shall determine by order of record, not exceeding twenty (20) years from date of issue."

The decision in the case of State ex rel. Jackson v. Hackmann, 249 S.W. 71 holds in substance as follows:

"Under Rev. St. 1919, Sec. 10751, providing 'the four preceding sections shall not apply to any township where the whole or any part thereof is included in a special road district, nor to any special road district including the whole or a part of a township which has heretofore issued bonds for road purposes which remain unpaid', held, that any township which was included in whole or part within a special road district was precluded from issuing any bonds for road purposes pursuant to sections 10747-10751, whether or not the district of which it was a part had heretofore issued bonds that remained unpaid."

Before Section 7964, supra, was amended, only the first paragraph or to the first semi-colon was then in existence under Section 10751, R.S. Mo. 1919.

Your question in effect is as to whether or not a portion or 3/5 of the township can vote bonds for the purpose of carrying out

a W P A project, assuming no bonds are unpaid or outstanding on the special road district which is a part of the township. There is no provision in any statute relating to the voting of bonds which permits any part of the township to vote for the issuance of the bonds. Section 7960, supra, states that the county courts of the several counties on behalf of any township in their respective counties are authorized to issue bonds, etc. The exceptions are contained in Section 7964, supra, none of which are to the effect that only a part of a township may have the right to issue bonds.

In view of the foregoing, we are of the opinion that your advice to the county court is correct in that it would be necessary for the whole of the township to vote for the issuance of the bonds.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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

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