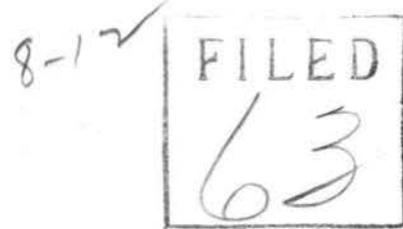


COUNTIES: TOWNSHIP BOARDS: Township Board has no authority to borrow money except by issuing bonds pursuant to the statute.

August 6, 1936.



Honorable Rex H. Moore,
Prosecuting Attorney,
Grundy County,
Trenton, Missouri.

Dear Mr. Moore:

This acknowledges your letter which is as follows:

"I desire to request the services of your office in rendering an opinion on the following question:

"I have had members of two township boards in my office in the last few days asking whether or not a township board can legally borrow money to carry on the activities of the township in furnishing materials and equipment for WPA projects and for grading and maintaining township roads. In each instance the anticipated revenue of the township will exceed the amount of money which the township desires to borrow plus the maturing indebtedness of the township and its annual operating expenses.

"If your opinion is that the township board has such authority can the money be borrowed by the execution of promissory notes or by issuing of warrants to mature in the future? If not, by either method what is the proper method?

"I am advised by the members of these two boards that they are in somewhat of a hurry to learn the legality of the proposed action and, due to the fact that I am at

this time engaged in the middle of a heavy term of court and have cases which necessitate my time in the circuit court, I would appreciate the services of your office in rendering this opinion as quickly as conveniently possible."

Section 3 of Article X of the Missouri Constitution provides:

"Taxes may be levied and collected for public purposes only. * * *"

Section 12 of Article X of the Missouri Constitution, in part, provides:

"No county, city, town, township, school district or other political corporation or subdivision of the State shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose; nor in cases requiring such assent shall any indebtedness be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes, previous to the incurring of such indebtedness, * * * * * provided; That with such assent any county may be allowed to become indebted to a larger amount for the erection of court house or jail, or for the grading, construction, paving, or maintaining of paved, graveled, macadamized or rock roads and necessary bridges and culverts therein."

Said section also provides that concurrently with the incurring of such indebtedness, with the assent of the voters, an annual tax shall be provided sufficient to pay the interest on the debt as it falls due, and to provide for the payment of the principal thereof within twenty years from the date of so contracting such debt.

Section 12257 of Article 2 of Chapter 86, R. S. Mo. 1929, provides:

"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."

Section 8149 of Article 15 of Chapter 42, R. S. Mo. 1929, provides:

"All road laws of this state shall apply to counties under township organization, unless by their terms limited to counties not under township organization, or in conflict with the provisions of this law."

Section 8162 of said Article and Chapter provides that all taxes levied under the provisions of the Township Organization Laws applying to roads and bridges shall be collected in the same manner and at the same time as taxes for county purposes are now collected,

"and all moneys arising therefrom shall be appropriated, set apart and kept as a special road and bridge fund, and shall be used for road and bridge purposes, and for no other purpose whatever."

Section 7960 of Article 5 of Chapter 42, R. S. Mo. 1929, provides:

"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."

In the case of State ex rel. v. Forrest Smith, State Auditor, No. 35095, Supreme Court En Banc, May Term, 1936, (not yet officially published), one of the questions before the court was the authority of Buchanan County to issue \$300,000 of Poor Relief Bonds to take care of the poor in that county. It was admitted there was no express statutory authority authorizing the county to issue such bonds, or to vote thereon. Relator contended that Section 12 of Article 10 of the Missouri Constitution authorized the county to issue bonds without express statutory authority provided (1) that the bonds were issued only for a county public purpose, (2) that the bonds were authorized by two-thirds of the voters of the county voting on the proposition, and (3) that the bonds and all other indebtedness of the county can not for general purposes exceed five per cent of the total assessed valuation of the taxable property of the county, to be ascertained by the assessment next preceding the last assessment previous to the incurring of the indebtedness.

The court cites the case of State ex rel. Clark County v. Hackmann, 280 Mo. 686, 218 S. W. 318, where Clark County submitted to the voters the proposition of incurring an indebtedness for over \$100,000 and issuing bonds of the county therefor to pay judgments against the county. The bonds were authorized at a special bond election by a vote of more than two-thirds of the electors voting on the proposition. The court states that the validity of the bonds was sustained on the ground that Section 12 of Article 10 of our State Constitution in itself constitutes a grant of authority to contract indebtedness for a public purpose with the assent of two-thirds of the voters voting on the proposition and within the debt limitation specified in Section 12 of Article 10 of the Constitution, and further states:

"We also held that the debt created by the bond issue was for a 'public purpose' within the meaning of Section 3 of Article 10 of our Constitution. On the authority of the case of State ex rel. Clark County vs. Hackmann, supra, we hold that Section 12 of Article 10 of our State Constitution is a self-enforcing grant of power permitting a county

to incur indebtedness for a county public purpose if authorized by two-thirds of the voters of the county voting at an election on such proposition, if such indebtedness be within the amount permitted by the Constitution."

The court also holds that the \$500,000 bond issue of Poor Relief Bonds is for a public county purpose within the meaning of the constitutional provision.

In the case of *Sherlock v. Duck Creek Township*, 92 S. W. (2d) 675, the authority of a township to issue bonds under the above quoted section so authorizing the same was approved.

If your township desires to borrow money by following the provisions of Section 7960, supra, and the question is submitted to and approved by two-thirds of the voters as therein provided, it would appear that the township has authority to borrow money in that way. From an examination of the statutes, we have not found any other provision authorizing the township as such to borrow money.

We are not now discussing the authority of the township to incur indebtedness, but are limiting these observations to its right to borrow money. Absent a statutory provision authorizing it to borrow money, and defining the method thereof, the township does not have authority to borrow money.

With reference to that part of your letter inquiring as to the authority of the township to expend revenue in carrying on the activities of the township in furnishing materials and equipment for WPA projects, and for grading and maintaining township roads, this office rendered an opinion dated April 30, 1936, to Honorable Merrill E. Montgomery, Prosecuting Attorney of Sullivan County, to the effect that where such township board "has raised money for road and bridge purposes, it is specifically authorized to construct roads in the township, to contract for such work, to purchase machinery, employ operators, and purchase needed materials," and said opinion further states:

"We are of the opinion that the Board has the power to appropriate money from the road and bridge fund of the township to be used on W.P.A. projects, where said W.P.A. projects are identified as road or bridge projects within the township.

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"We are of the opinion that a W.P.A. project to crush rock and hard surface roads within the township is purely a township road and bridge purpose for which the money was originally levied, and for which the Board in its discretion can spend the money in lieu of spending it on the usual maintenance demands."

CONCLUSION

It is our opinion that a township in a county that is operating under township organization has authority to borrow money in the manner provided by Section 7960, supra, by following the provisions thereof and bearing in mind the limitations of the Constitution, and that it does not have authority to borrow money in any other way.

We are further of the opinion that if you have the money on hand with which to carry on your WPA projects of the township, the same may be lawfully expended in cooperation with the WPA authorities in improving said roads.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

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

DW:HR