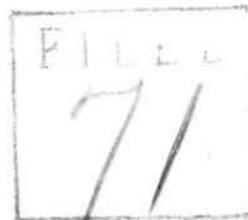


COUNTY COURTS: Not authorized to levy more than 40¢ for county purposes, as provided by the Constitution, absent a vote of the people.

November 30, 1936.



Honorable J.T. Pinnell,  
Prosecuting Attorney,  
McDonald County,  
Pineville, Missouri.

Dear Sir:

We acknowledge receipt of your inquiry, which is as follows:

"The assessed valuation of McDonald County is between six million and ten million dollars. The County's warrant indebtedness is being reduced to judgments. The total will be probably \$50,000.00.

"Sec. 2892, R.S. 1929, provides 'that nothing in sections 2892 to 2894 inclusive, shall be so construed as prohibiting any county \* \* \* that has or may hereafter have a bonded or judgment debt \* \* \* from funding or refunding such debt without the submission of the question to a popular vote \* \* \* '

"Under the Constitution, this county can not exceed a 40 cent levy for 'county purposes.'

"Question: Could the County Court levy a bond tax (in excess of the levy of 40 cents for county purposes) for the payment of bonds and interest?"

Section 11, Article X of the Missouri Constitution, providing for the levy of taxes for county and other purposes, provides in part as follows:

"For county purposes, the annual rate on property \* \* \* in counties having six million dollars and under ten million dollars, said rate shall not exceed 40 cents on the one hundred dollars valuation \* \* \* said restrictions as to rates shall apply to taxes of every kind and description, whether general or special, except taxes to pay valid indebtedness now existing or bonds which may be issued in renewal of such indebtedness \* \* \* "

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

"No county \* \* \* 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 \* \* \* "

Section 2892 (Laws of Mo. 1931, p. 138) provides that the various counties are authorized by their respective county courts to

"fund or refund any part of all of their bonded or judgment indebtedness, including bonds, coupons or any judgment, whether based on bonded or other indebtedness, and for that purpose may make, issue, negotiate, sell and deliver renewal, funding or refunding bonds, and with the proceeds thereof pay off, redeem and cancel such judgments or old bonds and coupons as the same mature or are called for redemption, or such renewal, funding or refunding bonds may be

issued and delivered in exchange for the judgments, bonds or coupons to fund or refund which the renewal, funding or refunding bonds were issued: Provided, that in no case shall the amount of the debt of any such county, township or parts of townships, or city, village, incorporated town, school district or road district be increased or enlarged under the provisions of this chapter, and provided also that no renewal, funding or refunding bonds issued under this chapter shall be payable in more than twenty years from the date thereof,

\* \* \*

Provided further, that nothing in sections 2892 to 2894, inclusive, shall be so construed as prohibiting any county, city, township, school district or road district from renewing, funding or refunding such debt without the submission of the question to a popular vote)"

Section 2893, R.S. Mo. 1929 provides the method for holding the election. Section 2894 empowers the county court to proceed to fund any part or all of such indebtedness in conformity with the provisions of said Chapter 15, R.S. Mo. 1929. Section 2895 provides that the county shall, at the time of issuing the bonds, "provide in the express manner provided by law for the levy and collection of an annual tax sufficient to pay the annual interest on such funding bonds as it falls due, and a sufficient sinking fund for the payment of the principal of such bonds when they become due."

We construe your question to be that, assuming your county has a bonded or judgment indebtedness which is valid but which cannot be retired with the collection of the 40 cent levy authorized by the Constitution, is your county court authorized without a vote of the people to levy a tax in addition to the 40 cents for county purposes, from which additional tax the said debts may be retired?

In the case of Lamar Water & Electric Light Company v. City of Lamar, 128 Mo. 188, 194, speaking of whether the same rule applies to counties as applies to cities with reference to the construction of these constitutional provisions, the Court (l.c. 194) said this:

"This line of reasoning is far reaching in its consequences, for if correct as to cities, it is correct as to counties, school districts and townships."

This was a case by the Court En Banc in which the Columbia Case (1892) 111 Mo. 365, 20 S.W. 236, and later before the Court En Banc in State ex rel. v. Seibert (1893) 116 Mo. 415, 22 S.W. 732, was overruled, and the Court here speaking of Sections 11 and 12 of the Missouri Constitution said (l.c. 215):

"Section 12 could then be regarded as a proviso to section 11, and any tax duly levied to meet a voted indebtedness would have a solid foundation on the taxable resources of the locality. Yet on the other side, the possibility of depriving the municipality of means to sustain its government would disappear.

"By that construction alone, it seems to us, can both of these sections be given full force."

And at page 216, it is said:

"The two sections are component parts of a system of financing which experience pointed out as furnishing a safer course than had been previously followed.

"Two great objects were in view and each of the sections treats of one of them.

"One object was to limit the rates of taxation for raising the annual revenue required for local purposes; the other to limit the power to incur indebtedness beyond the annual income and revenue provided for any one year."

And at page 220, the Court said:

"It seems first of all necessary that the funds, permitted by section 11 to be raised, for the legitimate, ordinary purposes of the government, should be preserved from invasion or diminution by any tax levied under section 12. Experience demonstrates that the limitations of section 11 are narrow enough even as applied to the general needs of the municipalities which that section governs. The provisions of section 12 were not designed to cut down the annual revenue intended for the ordinary wants of the local governments. But such a cutting down would be imperative, if the first alternative ruling, already discussed, were adopted.

"On the other hand, the terms of section 12 are not so drawn as to permit the conclusion that the tax levied under them was intended to be any such myth as it would be if it depended only on a surplus remaining, each year, from the rates levied under section 11.

"The only escape from these results is in the reading of those sections which we have above attempted to justify, namely: That the tax expressly authorized in the last lines of section 12 may be imposed in excess of the rates named in section 11, if the other limitations in section 12 are observed."

In this case the question had been submitted to the people and received their approval, but the question was whether it was a thing that could be authorized, even by a vote of the people.

Your inquiry is silent as to whether the bond issue voted on by the people, assuming such to be a fact, also carried the provision authorizing the levy of the tax with which to pay the bonds. With this situation at hand, we assume that no question has been submitted to the people or approved by them authorizing the levy of a tax with which to pay the bonds and interest.

In the case of Consolidated School District v. Day, 328 Mo. 1105 (1931), Court EnBanc, the object sought was a pro forma decree authorizing the issuance of \$11,500 in school bonds. The defendant intervener contended that the question of the issuance of said bonds and the levying of a tax in payment thereof were not submitted to the voters of the school district as provided by Section 11 of Article X of the Constitution, and that the indebtedness alleged to have been incurred and evidenced by the judgments in the case was in violation of the provisions of Section 12 of Article X of the Constitution in that it was an attempt to cause the district to become indebted to an amount exceeding the income or revenue provided by said school district for the year without the assent of two-thirds of the voters of the district.

They also charged that Section 2892 was unconstitutional, but this latter question was not preserved for review. It was admitted at the trial that no election was held in said school district to authorize the issuance of the bonds in question and that the amount of said bonds and the amount of the current expenses of said school district exceeded the estimated income and revenue for that year. These bonds were issued for the purpose of paying off two judgments which had previously been obtained totaling \$11,069.03. At page 1113 of the opinion is the following:

"In view of the express provision clearly appearing in the petition and proof as a part of the school board's resolution authorizing the issuance of said bonds, to-wit, that none of said bonds should be delivered or become binding obligations of said district until said judgments were fully satisfied and recorded, seems to hold that the issuance of said bonds does not create a new or additional indebtedness apart from said judgment indebtedness. It only changes the form of the judgment indebtedness. This feature clearly distinguishes the instant case from that of State ex rel. Clark County v. Hackmann, 280 Mo. 686, 703, 708, 218 S.W. 318, cited by respondents, in which the proposed bond issue was not so characterized, and in that case this very distinction was recognized and rather fully discussed. Subsequently, this court en banc said in State ex rel. Sedalia v. Weinrich, 291 Mo. 461, 466, 236 S.W. 872, that 'the great weight of authority is to the effect that the refunding of a valid debt in such manner that the payment

and extinguishment precedes or is simultaneous with the coming into existence of the refunded debt as an obligation, does not create a new indebtedness or add to the previous one, but merely changes its form. This is true whether the refunding bonds are exchanged for the evidences of the old debt or are sold and the proceeds actually used to extinguish the old at the time and in the manner stated."

And at page 1115, the Court said:

"The bonds here involved were not issued for the purpose of erecting public school buildings, but to refund a then existing judgment indebtedness, and the rate of levy ordered in connection with their issuance was never submitted to a vote of the people."

At page 1117:

"The exact question now before us is not the validity of the original judgment indebtedness, but whether or not the laws of the State governing the change in this form of indebtedness to that of a bond issue have been complied with. Surely the above quoted requirement of Section 2895, Revised Statutes 1929, that at the time of issuing the bonds provision shall be made to retire them, is not a mere direction as to form without regard to the validity of such provision. It is a companion section to Section 2892, Revised Statutes 1929, both being a part of the same act which was originally enacted in a somewhat different form (Laws 1879, p. 48), and they should be construed together. The purpose of a law authorizing the funding of such indebtedness is to place it in a form not only advantageous to the seller but affording a reasonably safe and certain means of its collection by the

purchaser of the bonds. When the record shows, as it does in this instance, that at the time bonds are issued the amount of the tax levy necessary to meet the required statutory provision for their retirement exceeds constitutional limitations upon the taxing power one of the chief objects of the bond issue, to-wit, provision for payment of the indebtedness, fails."

CONCLUSION

It is our opinion that the county court of McDonald County does not have authority, absent an election at which two-thirds of the voters express their approval of a tax levy for county purposes in excess of forty cents on the one hundred dollars valuation, to levy an additional tax for county purposes above the forty cents, even though the additional levy be for the payment of bonds and the payment of interest thereon.

Respectfully submitted,

DRAKE WATSON,  
Assistant Attorney General.

APPROVED:

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J. E. TAYLOR,  
(Acting) Attorney General

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