

CITIES: Cities of the fourth class have a right to issue bonds for the purpose of building a municipal auditorium when the assent of two-thirds of the legal voters of such city voting at an election held for that purpose have assented thereto.

April 14, 1936.



Hon. H. L. Stolte
State Representative
Gasconade County
Hermann, Missouri

Dear Sir;

This will acknowledge receipt of your request of April 6th for an opinion, which reads as follows:

"Will you please give me your opinion as to whether or not a city of the fourth class, incorporated presumably under a common charter, has the right to vote on a bond issue for the purpose of building a municipal auditorium?"

"The question arose as to whether we could build a municipal auditorium and we would like to be more certain about it."

Your attention is directed to Section 7030, R. S. Mo. 1929, relating to what bonds may be issued for by cities of the fourth class. It reads as follows:

"Bonds may be issued for erection of purchase of public buildings, bridges, waterworks, electric light plants and ice plants, public parks, and other improvements, and for establishing and maintaining a fire department. The board of aldermen shall have power to borrow money and issue bonds for the payment thereof, within the limits prescribed by the Constitution, for the purpose of erecting waterworks, electric light works, public parks and

ice plants, or acquire the same by purchase; also a city hall and other public buildings and improvements and for furnishing the same, and for the erection of public bridges across streams dividing counties, if located within one mile of its corporate limits, the expense of building said bridges to be borne in part by the counties, as provided for by Section 7903, R. S. 1929, but bonds for the purpose aforesaid shall not be issued until two-thirds (2/3) of the legal voters of such city, voting at an election held for that purpose, have assented thereto, in accordance with article 10, chapter 38, R. S. 1929. *****

You will note from a careful reading of the above section of the statute that the board of aldermen shall have the power to borrow money and issue bonds within the limits prescribed by the Constitution for the erection of public buildings, and other improvements, provided that such bonds are issued in accordance with Article 10, Chapter 38, R. S. Mo. 1929. Pursuing our query further for the purpose of determining "within the limits prescribed by the Constitution", we find the following under Section 11, Article X of the Constitution of Missouri:

*****For the purpose of erecting public buildings in counties, cities or school districts, the rate of taxation herein limited may be increased when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and two-thirds of the qualified voters of such county, city or school district, voting at such election, shall vote therefor. The rate herein allowed to each county shall be ascertained by the amount of taxable property therein, according to the last assessment for State and county purposes, and the rate allowed to each city or town by the number of inhabitants, according to the last census taken under the authority of the State, or of the United States; 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: *****

The further reading of said section discloses in part the rate of taxation for the purposes of issuing bonds, the proceeds of which will be used in erecting public buildings, as follows:

*****in cities and towns having less than ten thousand and more than one thousand inhabitants, said rate shall not exceed fifty cents on the hundred dollars valuation; *****

Your attention is further directed to Section 7217, R. S. Mo. 1929, relating to the incurring indebtedness by various cities, whether organized by special charter or under the general laws of the State. It reads as follows:

"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, for any purpose authorized in the charter of such city, town or village, or by any general law of the state, upon the assent of two-thirds of the legal voters of such city, town or village voting at an election held for that purpose: Provided, such indebtedness so to be contracted shall not, with the existing indebtedness of such city, town or village, exceed in the aggregate five per cent 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; and provided further, that the proper authorities of every such city, town or village incurring such indebtedness shall, before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting same."

You will note that the contemplated indebtedness shall not, with the existing indebtedness, exceed in the aggregate five per cent of the value of the taxable property therein. This is ascertained by an assessment next preceding the last assessment for state and county purposes previous to the incurring of such indebtedness. It becomes obligatory upon the proper authorities of such city, town or village contemplating incurring the indebtedness before or at the time of so doing, to provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due. It becomes their further duty to establish a sinking fund for the payment of the principal within twenty years from the time of contracting the indebtedness.

Section 7651, R. S. Mo. 1929, relating to certain cities owning and acquiring public utilities, provides as follows:

"Any city of the third or fourth class, and any town or village, and any city now organized or which may hereafter be organized and having a special charter, and which now has or may hereafter have less than thirty thousand inhabitants, shall have power to erect or to acquire, by purchase or otherwise, maintain and operate, **** public auditorium or convention hall, which are hereby declared public utilities, and such cities, towns or villages are hereby authorized and empowered to provide for the erection or extension of the same by the issue of bonds therefor, *****."

It is evident, from the above section of the statute, that a city of the fourth class is given the right to erect or acquire, by purchase or otherwise, maintain and operate, a public auditorium or convention hall. It is further evident that in order to thus acquire the public utility, that the city is authorized and empowered to issue bonds.

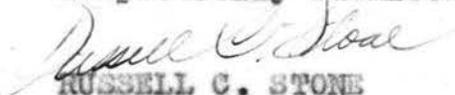
In the case of Halbruegger vs. City of St. Louis, 262 S. W. 1. c. 381, the court had before it for consideration the statute above quoted, and in passing upon the right of a city to erect or acquire a public auditorium or convention hall, the court said:

"In this case there is also the fact that the Legislature has authorized all cities of the second class (Laws 1923, pp. 280, 281), and all cities, towns and villages, having less than 30,000 inhabitants, to erect or acquire 'a public auditorium or convention hall.' Section 9089, R. S. 1919. In the process of passing these acts the State Legislature necessarily determined that the erection or acquisition of such structures was a public purpose."

CONCLUSION.

In light of the above, it is the opinion of this department that a city of the fourth class has the right to build a municipal auditorium and a further right to issue bonds for the purpose of erecting said municipal auditorium in accordance with Article 10, Chapter 38, R. S. Mo. 1929.

Respectfully submitted,


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APPROVED:

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