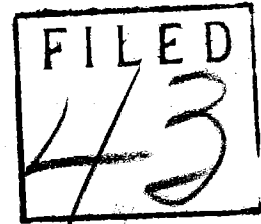


COUNTY COURTS

- (1) When erroneous distribution of funds from road bonds made by the township board may be ratified and confirmed by the county court.
- (2) Proceeds of road bond issue may be legally expended for purchase of suitable equipment.

August 24, 1937.

Mr. Glen W. Huddleston,
Prosecuting Attorney,
Carrollton, Missouri.



Dear Sir:

This will acknowledge receipt of your inquiry which is as follows:

"Several of the townships in Carroll County are contemplating issuing road improvement bonds and two of them have already sold bonds under the terms and provisions of Sections 7960-7963, Revised Statutes of Missouri, 1929, and I would appreciate the opinion of your department in regard to the proper manner of expending the funds obtained by virtue of said bond issue.

"Under the provisions of Section 7963 it appears that the funds arising from the sale of said bonds issued pursuant to the sections above mentioned are to be paid over to the treasurer of the township and by him expended upon the order of the County Court of Carroll County, Missouri. In one of the townships which have already sold their bonds no point has been made in regard to this matter and the township board are taking steps to expend the funds so obtained from their bond issue in the same manner in which other township funds are expended, that is, by order of the township board and without the County Court asserting any jurisdiction over said funds. The attorney for another township which has just sold their bonds maintains that all the funds so derived should only be dis-

bursed by the township treasurer upon the order of the County Court and that there is serious doubt as to the township treasurer having any right to pay warrants drawn upon said funds by order of the township board alone as is usually done in most cases under the provisions of Section 12291, Revised Statutes of Missouri, 1929, said statute last referred to being the general statute dealing with the expenditure of township funds. In this regard I wish to call your attention to the case of State ex rel. Wammack and Welborn vs. Affolder, 257 S.W. 493, which holds that the township treasurer shall pay out said funds on the order of the County Court, but does not necessarily say that said manner is the only way in which said funds may be expended although it does appear that such might be inferred.

"The County Court does not desire to control said funds for the various townships unless it is necessary that they do so, because even if they did so they would probably desire that the bills presented to the court for allowance and order of expenditure, if such procedure be necessary, were subject to the approval and sanction of the township board or officials who would more naturally be more closely in connection with said work and expenditures than the county court might be, but I feel that the township treasurer should be fully protected in the matter.

"If it is your opinion that said funds can only be expended upon the order of the County Court alone but some of said funds have already been disbursed upon the order of the township board alone, said expenditures having been made in good faith and otherwise proper, would the error in making said prior expenditures by the board be cured at this time by the County Court ratifying and confirming the same and assuming future control of said funds by proper order?

"In anticipation of selling their bonds and with the view of avoiding the payment of interest on their bonds until necessary, one of the township boards have already expending considerable funds from their general revenue on their proposed gravel road projects with the intention of reimbursing their general revenue as soon as said bond issue was sold; this having been done in perfectly good faith and naturally with some saving to the taxpayers in interest at the present time. Can it now be ordered that general revenue be reimbursed to the extent of the funds spent on the particular projects to be graveled or improved with the funds arising from the bond issue, in order that other roads not covered by said projects need not be neglected and the general work of the township not neglected for the balance of this year? It might be added in this regards that the ballots used in voting or the petition for said bond election did not call for any particular roads, but merely for improving, grading and otherwise improving the roads in the township, including bridges and culverts, but when said proposition was submitted to the voters it was generally understood that the funds obtained would be used on certain proposed roads in said township.

"A majority of the townships anticipate the use of a part of the funds obtained in purchasing suitable equipment for carrying out this work, which of course may also be used later in other parts of the township, I presume that this type of expenditure is proper."

I.

You state that several of the townships in your county are contemplating issuing road improvement bonds and that two of them have already sold bonds under the terms and provisions of Sections 7960-7963, R. S. Mo. 1929.

Section 7960, R. S. Mo. 1929, provides when county courts may issue road bonds on behalf of townships in their respective counties, in part, as follows:

" * * * 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 * * * township, * * * 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 * * * county courts shall determine by order of record, not exceeding twenty (20) years from date of issue."

Section 7961, R. S. Mo. 1929, makes it the duty of the county court to order an election in the township upon the question of issuing road bonds upon the filing with the clerk of the court of a petition asking for such bonds:

"* * * whenever twenty legal voters of any township shall file with the clerk of the county court wherein the township is located a petition in writing asking that bonds for road purposes be issued for and on behalf of such township, it shall be the duty of the court to order an election to be held in such township upon the question of issuing bonds. The notice of election, in either case, shall state the amount of bonds to be issued and the polling place or places at which the election is to be held, and shall be published once each week for three consecutive weeks in some newspaper published in the county wherein is located the township * * *; the first publication to be at least twenty-one days prior to the date of the election,

computed as is provided in section 655, R. S. 1929, * * *. The county court, on behalf of the township, * * * shall appoint the judges and clerks of election, and the returns of the election shall be filed with the clerk of the county court * * *, and be canvassed by the county court * * * and the result ascertained by, and entered upon the records of, such court * * *: Provided, that no person shall be permitted to vote at such election who would not be qualified to vote at a general election were a general election held on that day. If it shall appear that two-thirds of the voters voting at such election on said question shall have voted in favor of the issuance of said bonds, * * * the county court * * * shall order and direct the execution of the bonds for and on behalf of such * * * township, and shall provide for the levy and collection of a direct annual tax upon all the taxable property in said * * * township sufficient to provide for the payment of the principal and interest of the bonds so authorized as they respectively become due. * * * At the time the county court is required to determine and levy the rate of taxation for state, county, school and other taxes, to determine, order and levy such a rate of taxation upon the taxable property in any township in such county as may have outstanding bonds issued under this section as will be sufficient to pay interest and principal falling due during the next succeeding year. It shall be the duty of the clerk of the court to extend upon the tax books of the county such rate of taxation upon and against all of the taxable property in such township, and when so extended the same shall be collected by the collector of the revenue at the time, in the manner, and by the means that state, county, school and other taxes are collected. All of the laws, rights and remedies of the state of Missouri for the collection of state, county, school and other taxes, shall be applicable to the collection of taxes herein authorized to be collected."

Section 7962, R. S. Mo. 1929, provides the form of the ballot to be used at the election held upon the question of issuing township road bonds.

Section 7963, R. S. Mo. 1929, provides when and how the bonds are to be sold, in part, as follows:

" * * * the county court on behalf of the townships, shall sell said bonds to the best advantage and the proceeds shall be paid over to the treasurer of the * * * township * * * and be by him disbursed, on the order of the * * * county court, in payment of the cost of holding said election and in paying the cost of constructing or improving roads in such districts or townships, including bridges and culverts."

The above section is clear and unambiguous, providing that when the county court has sold the bonds, the proceeds are to be turned over to the township treasurer, and to be disbursed by him on the order of the county court.

You point out that one of the township boards is taking steps to expend the funds obtained from its bond issue in the manner in which township funds are expended, viz., by order of the township board and without the county court asserting any jurisdiction over the funds.

Such procedure would clearly be unauthorized and contrary to Section 7963, supra, as witness the following language of the court in the case of State ex rel. v. Affolder, 257 S. W. (Mo. A.) 493, l. c. 494:

"Does section 13204, R. S. 1919, prohibit defendant from paying the warrant? This section reads:

"The township trustee and ex officio treasurer shall not pay out any moneys belonging to the township for any purpose whatever, except upon the order of the township board, * * * and attested by the township clerk."

"This section was enacted in 1879 (Laws 1879, p. 225), when the Township Organization Act was passed, and has come down without substantial change. Section 10750, R. S. 1919, was passed in 1917 (Laws 1917, p. 473), and provides among other things as stated, supra, that the proceeds of the bonds shall be paid over to the township treasurer and by him disbursed on the order of the county court, etc. In State ex inf. Major v. Amick, 247 Mo. loc. cit. 292, 152 S. W. loc. cit. 597, the court said:

"Where there are two acts and the provisions of one apply specially to a particular subject, which clearly includes the matter in question, and the other general in its terms, and such that if standing alone it would include the same matter, and thus conflict with each other, then the former act must be taken as constituting an exception to the latter or general act."

"This rule of construction has been invoked many times, and is applicable here. Since section 10750 is a much later statute than is section 13204, and since section 10750 applies to a particular subject, and since section 13204 is general in its application, we hold that section 10750, on the point in question, should be construed as an exception to the general and prior section 13204."

The question now arises whether the funds which were disbursed erroneously by the township board, but in good faith, can now be cured by the county court ratifying and confirming such expenditures, and assuming future control of the funds.

15 C. J., Section 117, page 465, with reference to ratification by a county of expenditures it had the authority to make, states that:

" * * * if the county board has authority to order expenditures or the performance of services on behalf of the county, it may cure informalities or irregularities in the procedure for ordering the making of such expenditures or the performance of such services, by a subsequent ratification of the acts done in pursuance of the order and in recognition of its liability therefor. On the other hand, a ratification will not be inferred from mere passive acquiescence, and the board has no power to ratify what it could not have authorized in the first instance."

From the foregoing, we are of the opinion that when the county court has sold the road bonds the proceeds are to be turned over to the township treasurer, and to be disbursed by him on the order of the county court.

We are further of the opinion that the county court, having authority to order such expenditure of funds, may by order made of record ratify and confirm the disbursement of funds erroneously made by the township board, and assume future control of the funds.

II.

In anticipation of the bonds being sold, and with the view of avoiding payment of interest on the bonds until necessary, you state that the township boards have in good faith already expended considerable funds from their general revenue for road improvements which were contemplated under the bond issue. The question then is asked whether, under such circumstances, the funds thus expended can be reimbursed by the county court to the township.

Under Section 7963, supra, the county court is given the express power to order the township treasurer to disburse the proceeds from the sale of the road bonds for the purpose of paying "the cost of constructing or improving roads in such * * * townships," but clearly if the bonds had not been

sold, the county court could not order an expenditure of the funds, there being none as yet in existence to be ordered disbursed.

The county court having no original authority to order the incurring of expenditures for road purposes until the bonds were sold and the proceeds paid over to the treasurer of the township, we are of the opinion that the county court may not subsequently upon the sale of the bonds ratify and confirm the acts of the township board and reimburse them for expenditures on the roads.

III.

Your third question is whether funds obtained from the bond issue may be used in purchasing suitable equipment for road improvements.

Section 7946, R. S. No. 1929, specifically gives the county court authority to make such an expenditure, in part, as follows:

"Whenever any public money, whether arising from taxation or from bonds heretofore or hereafter issued, is to be expended in the construction, reconstruction or other improvement of any road, or bridge or culvert, the county court, township board or road district commissioners, as the case may be, shall have full power and authority to construct, reconstruct or otherwise improve any road, and to construct any bridge or culvert in such county or other political subdivision of the state, and to that end may contract for such work, or may purchase machinery, employ operators and purchase needed materials and employ necessary help and do such work by day labor."

From the foregoing, we are of the opinion that a portion of the proceeds of the bond issue may be legally expended by the county court for the purchase of suitable equipment to be used in carrying out the purposes of the road bond issue.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

MW:HR