

TOWNSHIPS: May not issue bonds for road purposes when there is a special road district organized which includes the whole or any part of said township within its boundaries, and has road bonds outstanding and unpaid.

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Hon. V. C. Rose, Jr.
Prosecuting Attorney
Putnam County
Unionville, Missouri

Dear Sir:

This Department is in receipt of your letter of June 2, 1937, requesting an opinion as follows:

"The officials of a township in Putnam county have consulted with me about trying to issue some bonds for road and bridge purposes.

"Within the township in question are two special road districts which already have issued bonds that are now outstanding.

"I note that Section 7964 R. S. Mo. 1929, provides that a township cannot issue bonds when included within its territory is a special road district which has issued bonds that are outstanding, or vice versa. In checking up on this section I find nothing to the contrary, but before advising the township board that the section presented an insuperable obstacle, I should like to have your opinion if there is any way around it."

Section 7960, R. S. Missouri, 1929, 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."

Section 7964, R. S. Missouri, 1929, is as follows:

"The four next preceeding sections, to-wit: sections 7960, 7961, 7962 and 7963, R. S. Missouri, 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

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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."

We call your attention particularly to that part of Section 7964, R. S. Missouri, 1929, which we have underlined. This section is very clear and plain in its meaning as such is not open to construction. *Cummings v. Kansas City Public Service Commission*, 66 S. W. (2d) 920.

In *State ex rel Jackson v. Hackman*, 249 S. W. 71, the court had before it the interpretation of Section 10751, R. S. Missouri, 1919, which is in substance the same as Section 7964, R. S. Missouri, 1929, except that Section 7964, R. S. Missouri, 1929, is more explicit in its prohibition of the issuance of bonds for road purposes by townships, when other bonds of an overlapping special road district were outstanding and unpaid. In this case the court said at l. c. 73:

"It * * * seems apparent that while the Legislature intended to give townships, no part of which were contained in special road districts, the full right to vote bonds for road purposes, yet, whenever a special road district is organized and has taken in such township or part thereof, it tended to transfer to such special road district the management and control of road matters and the sole power thereafter to issue bonds for such purposes. The township is a political subdivision organized for various governmental functions, while the special road district is

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a political subdivision created solely for the purpose of taking care of road maintenance and road construction problems within its boundaries. It is more fitting that all matters of voting bonds for road purposes should be committed to the special road district where it exists, and such, apparently, was the theory of the Legislature in enacting section 10751."

The act of 1919 provided that the next preceding four sections "shall not apply to any township where the whole township or any part thereof is included in a special road district which has heretofore issued bonds for road purposes which remain unpaid." This act was amended in Laws 1923, p. 356, in its present form, and as we understand it, the amendment made the exception of Section 7967, R. S. Missouri, 1929, apply both ways, but did not change its former application to a township overlapped by a special road district. That is, when a special road district overlaps into a township that has road bonds outstanding the special road district is prohibited from issuing bonds for road purposes, or that when one special road district overlaps another, the same prohibition applies.

Therefore, it is the opinion of the Department that a township is prohibited by Section 7964, R. S. Missouri, 1929, from issuing bonds for road and bridge purposes when there is a special road district, which includes the whole or any part of said township within its boundaries, that has road bonds outstanding and unpaid.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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