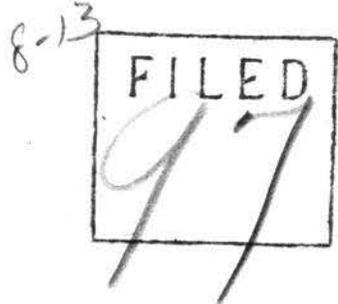


COUNTY COURT: ROAD BONDS: Section 7963, R. S. No. 1929, requires proceeds of road bonds to be turned over to the township treasurer and disbursed by him on order of county court.

August 10, 1937.



Mr. Mark W. Wilson,
Prosecuting Attorney,
Clinton, Missouri.

Dear Sir:

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

"I have been asked by the County Court of Henry County, Missouri, to request of your office an opinion and ruling on the above statute.

"This county is under township organization. Under a portion of section of the statute to be found in Chapter 42, Article 5, the County Court is authorized to call a special election in townships properly petitioned for the purpose of voting on the issuance of road bonds in such townships. Section 7963 provides that the County Court on behalf of the townships (in counties under township organization), shall sell said bonds and the proceeds shall be paid over to the treasurer of the township and be by him disbursed on the order of the Board of Commissioners or the County Court. From a reading of the section it is apparent that elsewhere the term "Board of Commissioners" refers to the Board of Commissioners of Special Road Districts and there is no direct authority contained in the statute authorizing the expenditure of bond money thus acquired and that it be expended by the order and under the direction and control of the County Court. There may be some judicial interpretation of this section of the statute whereby

the language herein used is broadened so as to permit the expenditure of such funds upon the order of the township board. Since the statute does not state that such money shall be expended except upon the order of the Board of Commissioners or the County Court it would seem that here is a grave question as to the authority of the County Court permitting Township Boards to direct the direction of such funds since the County Court as a general rule is considered, generally, the supervisor of all political subdivisions forming a part of the county government.

"Please furnish my office with an opinion on the above subject so that I may advise the County Court of this county."

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.

Section 7963, supra, was construed by the court in the case of State ex rel. v. Affolder, 257 S. W. (Mo. App.) 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

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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."

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.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General.

APPROVED:

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

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