

COURTHOUSE BONDS: By cooperation with Federal Government
County Court may build courthouse and provide
jail therein, under a courthouse bond issue.

August 23, 1938



Mr. Ben W. Ausman
Clerk of the County Court
DeKalb County
Maysville, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of recent date in which you request the opinion of this Department on the question therein submitted. A copy of your letter is herein set forth and your question is stated therein, as follows:

"I have been requested by the County Court to write you regarding the privilege of the Court in spending money on a court house and jail building. The proposition as voted was as follows:

"Public Notice is hereby given that pursuant to an order of the County Court of DeKalb County, Missouri, made and entered of record on the 6th day of July, 1938, an election will be held at the Regular Primary Election, at the regular polling places in said county, and in conjunction with said General Primary Election, on

TUESDAY, AUGUST 2nd, 1938.

to vote on a proposition to authorize said county court to issue bonds on said county to the amount of Fifty Five Thousand (\$55,000.00) Dollars, for the purpose of building and equipping a new Court house in said County.

"Notice is further given that at said bond election, the polls will be open at six o'clock in the forenoon and

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remain open until seven o'clock in the evening, unless the sun shall set after 7 o'clock, then the polls shall be kept open until sunset, and that said election will be conducted in conjunction with said primary election and in the same manner and at the same places as are general elections for State and County Officers.

"Done by the order of the Court, this 6th day of July, 1938.

"Witness my hand and the seal of the Court.

Ben W. Ausman
Clerk of the County
Court of DeKalb County,
Missouri.

"Can the Court build a jail which is a part of the court house with the funds which were voted by the proposition? I would appreciate very much an immediate reply, as the plans for the building are being held up awaiting this decision."

DeKalb County voted bonds at the Primary Election held Tuesday, August 2, 1938, in the amount of \$55,000 for the purpose of building and equipping a new courthouse in said county. The purposes for which the bonds were voted are stated in the notice, a copy of which you sent us. The election was held under the provisions of Article 5, Chapter 14, Revised Statutes of Missouri, 1929. We set forth that part of Section 2905 pertinent to the question asked in your letter, as follows:

"Whenever it may become necessary for any county in this state to incur an indebtedness in excess of the income and revenue provided for in one year, for the purpose of building a court house or jail,* *

it shall be lawful for any number not less than one hundred of the qualified voters of such county who are taxpayers therein to present to the county court of such county a petition in writing setting forth the object and purpose for which the indebtedness is desired to be incurred, and whether it is desired to issue bonds in evidence of such indebtedness, or to pay the same in a given number of years, to be stated in the petition, by the direct levy of taxes at a rate over and above the amount limited in section 11 of article 10 of the Constitution of the state of Missouri, and asking that an election be held to authorize the incurring of such indebtedness or the levying of such taxes. Upon the presentation of such petition it shall be the duty of the county court of such county at any term thereof to order that an election be held for the purpose set forth in the petition, which order shall, among other things, specify the time, place and purpose of the election. Such an election may be a special election, or it may be held on the day of any primary or general election authorized to be held by the laws of this state; provided, that the amount of indebtedness that may be incurred for the purpose of building, repairing or rebuilding a court house or jail shall not exceed an amount, including existing indebtedness, in the aggregate exceeding ten per centum of the value of the taxable property in such county, to be ascertained by the assessment next before the last assessment for state and county purposes previous to the incurring of such indebtedness."

We assume that the petition filed with the County Court by more than one hundred taxpayers of such county and the orders preceding the election agree with the notice sent to us, namely, "for the purpose of building and equipping a new courthouse in said county."

Since you submitted your written request for an opinion, you advised us orally that your county was to receive the sum of \$45,000 from the Federal Government as a P. W. A. grant for the purpose of building and equipping a courthouse and jail. With that information, and as a practical proposition and to carry out the wishes of the electors of your county, we will restate your question:

Can the County Court build a jail, which is an integral part of the courthouse, with the funds which were voted by the people as aforesaid, using in its construction the \$45,000 P. W. A. grant to build a combined courthouse and jail?

It will be noted that Section 2905, supra, uses the terms "for the purpose of building a courthouse or jail, or for the purpose of repairing or building a courthouse or jail * * *." The above statute is so worded that a proposition may be submitted to the people to build a courthouse, or a proposition may be submitted to build a jail, or, as is the usual practice where a jail is to be constructed within a courthouse, the proposition should be stated thus: "For the purpose of building a combined courthouse and jail."

We have consulted the transcripts of bond issues for building courthouses in various counties in the State and find that invariably the proposition has been stated as above, namely, "for the purpose of building a combined courthouse and jail," in cases where a jail is to be a part of the courthouse.

It is a question that there may be a difference of opinion among lawyers as to whether the county court may include jail facilities in the courthouse structure under a

bond issue voted for the purpose of building a courthouse or whether the county court should strictly follow the mandate of the people and use the money for a courthouse only. All doubt on the question would have been eliminated by the use of the word "combined" before "courthouse" and the use of the words "and jail" after "courthouse" in the petition, notice and order. Under the published notice as given, the bonds should be issued as courthouse bonds and not as courthouse and jail bonds.

Since the people of DeKalb County, by more than a two-third's majority as required by law, have indicated their desire to have a new courthouse and the Federal Government has agreed to grant \$45,000 for the purpose of building a courthouse and jail, as a practical and workable proposition we think that the bonds could be issued for the exact purpose as specified in the election proceedings, namely, for the purpose of building and equipping a new courthouse in said county, and then by cooperation with the Federal Government construct a building that would include a jail in the courthouse. It could then be well said that all of the bond issue authorized by the voters will be spent on the courthouse alone, and the major portion of the Federal grant for the courthouse and the remaining part of the Federal grant for jail facilities. This, we think, would satisfy the mandate of the people under the bond issue and could be legally accomplished.

Conclusion.

It is, therefore, our opinion that under the above circumstances, considering the bonds voted by the people together with the Federal grant, the County Court could then make a finding and determine that it was necessary that the jail facilities should be provided for and made an integral part of the courthouse, and thereby build a combined courthouse and jail, using such portion of the Federal grant as may be necessary to provide the jail facilities.

Very truly yours

APPROVED:

COVELL R. HEWITT
Assistant Attorney-General

J. E. TAYLOR
(Acting) Attorney-General
CRH:EG