

ROADS AND BRIDGES: Warrants issued on special levy under
Section 7891 bear interest.

January 11, 1938.7

Hon. Randolph H. Weber
Prosecuting Attorney
Butler County
Poplar Bluff, Missouri



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Dear Sir:

This will acknowledge receipt of your letter of
November 17, 1937, in which you request an opinion as follows:

"In your letter of Nov. 10th
relative to the road and bridge
fund you state that warrants can
be issued by the County Court on
the anticipated revenue of the
County for that purpose and that
these warrants can be protested.

"However, the point involved, is not
so much on the issuance and protesting
of the warrants, but the matter of
Interest.

"May I call to your attention that
this section involved (7891) applies
to a special levy. Does that make a
difference in the issuance of the
warrants? If so, from what fund does
the interest come, the general rev-
enue fund or from the special road
and bridge fund?

"The section involved states that
the money raised can be used only
for the building and maintenance of
roads and bridges. Therefore can
you pay interest out of the fund?

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"As we have a few warrants of this nature outstanding and the matter is being held up in the Treasurer's office here, we would appreciate an early opinion on this matter of interest. Thanking you again for your opinion of the 10th and hoping to hear from you relative to these inquiries at your earliest possible convenience, I remain,".

Section 7891, R.S. Missouri 1929, which is the authorization for this levy made by the County Court is in part as follows:

"In addition to the levy authorized by the preceding section, the county courts of the counties of this state, other than those under township organization, in their discretion may levy and collect a special tax not exceeding twenty-five cents on each one hundred dollars valuation, to be used for road and bridge purposes, but for no other purposes whatever, and the same shall be known and designated as 'the special road and bridge fund' of the county:."

This article and section does not expressly provide that interest may be paid on a warrant issued on said fund. However, we find that concerning regular county warrants, there is no specific provision that interest may be paid on said warrant, and the courts have long held that said warrants fall within the terms of the general interest statute (Section 2839, R.S. Missouri 1929) and bear interest, after protest, at six percent per annum.

In Robbins v. Lincoln County, 3 Mo. 57, a proceeding to compel the county court to audit and pay interest on a warrant which had not been paid when

presented, it is said by the court:

"The only question presented is, do the warrants issued by the County Court bear interest? If they bear interest, then the plaintiff would be entitled to his warrant for the amount of interest, as the treasurer is expressly required only to pay money on the order of the County Court.

"The law relied on by the plaintiff in error is, the first section of an act, entitled, an act regulating the interest of money (See Revised Code, 461), which says that creditors, excepting as hereinafter excepted, shall be allowed to receive interest at the rate of six per centum per annum, for all moneys after they become due, on bond, bill, promissory note, or other instrument in writing, &c. (a) It is insisted by Messrs. Carr and Chambers, counsel for the plaintiff, that this act applies to their case; that here money appears to be due by an instrument in writing, which is the warrant and order of the County Court. It is contended on the other side by Mr. Hunt, the Circuit Attorney, that this act does not apply to the case, and he insists that when the Legislature made the above act, they only had in view individual debtors, and not counties as debtors; otherwise the county would have been named.

"It may be true that the Legislature did not even so much as think of embracing in the law, counties as liable to pay interest. But the words of the act are extensive enough to embrace all persons, and bodies, capable of owing money by bond, bill, promissory note,

or other instrument in writing. By law the county is able to buy and sell certain things, to contract and be contracted with, and a County Court is by law expressly required to audit and allow all demands against the county, and to draw a warrant on the treasury for the amount allowed; here there is an instrument in writing, which shows money is due, but we are clear that the warrant must be presented at the treasury for payment, and payment refused, before any interest arises; that has been done in this case."

State ex rel. v. Trustees of Town of Pacific, 61 Mo. l.c. 158, is a case concerning the payment of certain warrants drawn by the town authorities. These warrants were made payable out of money appropriated for street purposes. The town had no money in the treasury with which to pay said warrants and a suit was brought to compel payment. In the suit, interest was demanded on each of said warrants. The court said in disposing of this question:

"We cannot find anything in the charter of the defendants, giving them power to issue warrants for the town indebtedness in this form. They have no authority in this respect different from the general law, which provides that when warrants are presented to the treasurer for payment, and there is no money in the treasury to satisfy the same, the treasurer shall endorse that fact on the back of the warrant, and from that time the same shall draw legal interest until funds are provided and set apart for its payment. A town warrant, therefore, will not bear interest till presentment is made to the treasurer, and there is an endorsement thereon that payment

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cannot be made because there are no funds. (2 Wagn. Stat., 1325, para. 11; Skinner v. Platte Co., 22 Mo. 437.) And when interest thus begins to run, it can only be at the rate of six per cent."

In *Isenhour v. Barton County*, 190 Mo. l.c. 176, 177, 178, it is said:

"It is conceded by the parties that the rule has been, in this State, since 1831, that county warrants bear interest from the date of their presentment for payment and refusal to pay because of no money applicable thereto. (*Robbins v. Co. Court*, 3 Mo. 57; *Skinner v. Platte Co.*, 22 Mo. 438; *State ex rel. v. Trustees*, 61 Mo. 158.)"

* * * * *

"It has already been pointed out that the statutes relating to county warrants make no provision whatever for the payment of interest thereon, but that this court has held that they do bear interest and that the general statute in reference to interest is as applicable to such warrants or the debts they evidence, as to any other character of debts. The Legislature evidently intended that such should be the case, and the failure to provide specially for interest was not a mere *casus omissus*. For ever since 1865 there has been a provision upon the statutes of this State in reference to city warrants, similar

to the provisions herein set out January 11, 1938. as to county warrants and the protesting of the same when there was no money to pay them, except that it was further provided that such warrants so protested should draw legal interest until funds for the payment thereof should be set apart therefor."

* * * * *

"It is obvious, therefore, that the Legislature intended that the general statute in reference to interest should govern such cases. The statute in referring to interest (sec. 3705, R.S. 1899) provides that in the absence of an agreement between the parties, interest shall begin to run after the debt becomes due and demand shall have been made. But the statute contains no provision or regulation as to the demand. Hence the general rules of the common law as to demand apply, for the common law is the law in this State except so far as it has been modified by statute."

The excerpts from the Isenhour case are from a dissenting opinion filed along with the majority opinion. However, the majority opinion is in accord with the dissenting opinion on this point, the difference being on another point.

The levy made under authority of Section 7891 has been held to be no part of the regular county levy and is not to be classified for general county purposes, as fixed by Section 9874, R.S. Missouri 1929 (Amended Laws 1933, page 35). The case holding this (State v. Pemiscot Land and Cooperage Co., 295 S.W. 78) did not have the precise point involved that is under consideration here. That case held that the levy was no part of the regular county levy, insofar as it pertains to the restriction made in Section 9873, R.S. Missouri 1929, prohibiting an increase of more than ten percent in any one year's levy over that of the prior year.

It cannot be questioned that the tax under consideration here, which is levied and collected for the purpose of building and maintaining roads, is a tax for a county purpose, because certainly the building of roads is a governmental function. A tax to carry on a governmental function

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of a county is, in a broad sense, a tax for a county purpose.

Section 7891, supra, provides that the money raised by said levy is "to be used for road and bridge purposes, but for no other purpose whatever". Unless this provision prevents, we think warrants issued on this fund draw interest, after protest, the same as regular county warrants, because the language of Section 2839, R.S. Missouri, is "extensive enough to embrace all persons, and bodies, capable of owing money by bond, bill, promissory note, or other instrument in writing" (Robbins v. Lincoln County, 3 Mo. 57). A warrant issued on the fund is an instrument in writing.

Let us consider this provision to see if, by its terms, that the payment of interest out of these funds would be contrary to it in the light of the reasoning in the above cases pertaining to regular county warrants.

Section 7891 was adopted by the legislature pursuant to Article X, Section 22, of the Constitution of Missouri. In Road District v. Ross, 270 Mo. 77, 85, the court construed the general legislative plan of raising revenue for road purposes as follows:

"In considering these questions our attention has been arrested by the general plan evident in recent legislation for raising and expending funds for road and bridge purposes in connection with sections 11 and 22 of article 10 of the State Constitution. The limit placed upon the levy for 'county purposes,' including this fund, has been acquiesced in as sufficient and salutary for all such purposes until the development of the State developed a growing necessity for additional expenditure upon its highways. This resulted in the amendment of 1908 embodied in section 22, authorizing an 'additional' levy of twenty-five cents on the taxable property of the State to be used for these and no other purposes whatever. In other words, it was found desirable to increase the amount to be raised by taxation for this

purpose without increasing the amount to be raised for other county purposes, which had been found to be entirely satisfactory. The amendment was adopted for this purpose alone, and legislation was immediately begun to carry it into effect in accordance with the spirit of economy which it exhibited."

Thus we see that general revenue is to be used for "county purposes" and nothing else. This is evident in view of Article X, Section 1, and Article IV, Sections 47 and 48, of the Constitution of Missouri. These sections provide in substance that taxing power may be exercised by counties under authority granted by the legislature for county purposes; that public money may not be given to private individuals; and that no claim against a county shall be paid without express authority of law.

The money raised by the levy under Section 7891 is nothing more than a levy for a special county purpose, and as such, is not to be commingled with money raised for general county purposes.

The courts have held, as we have heretofore pointed out, that warrants on funds raised for county purposes - that is, general county warrants - draw interest, after protest, at six percent per annum. The money raised by the levy under Section 7891 is for a county purpose, but it is a special county purpose. The restriction as to the use of said money refers to the commingling and using of said money for general county purposes under the classes provided in Section 9874, R.S. Missouri 1929 (Amended Laws 1933, page 35), and to nothing more.

CONCLUSION

Therefore, it is the opinion of this department that warrants issued upon "the special road and bridge fund" of the county, which is raised by a tax levy under

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authority of Section 7891, R.S. Missouri 1929, bear interest, after presentation and protest, at the rate of six percent per annum until paid, or until money is set aside out of said fund for their payment.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.
Assistant Attorney General

APPROVED by:

J.E. TAYLOR
(Acting) Attorney General

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