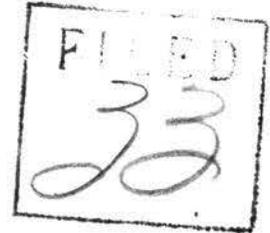


COUNTY TREASURER:) County Treasurer shall advertise bonds for
BIDS, SALE OF:) bids as directed in Sec. 2911, R. S. 1929;
) County Court may order Treasurer to reject
bids; and court may order treasurer to again
advertise the bonds in the same manner,
or then may sell them at private sale.

September 28, 1939



Mr. J. D. Gillespie
County Clerk
Oregon County
Alton, Missouri

Dear Sir:

This Department is in receipt of your letter of September 25th, wherein you request an opinion based on the facts as contained in your letter, which is as follows:

"This Court (County of Oregon) would like to have the opinion of your office, as to the legal procedure that this Court should take to sell Bonds that was authorized by Election on the 10th day of January 1939, (\$25,000.) to construct a Court-house and Jail in said County (W.P.A.).

"1st. Must Bonds be advertised as stated in Section 2911, R. S. Mo. 1929?

"2nd. Does this Court have the power or legal rights to sell at private bids without first advertising such Bonds?"

Your questions involve a construction of Section 2911, R. S. Mo. 1929, which is as follows:

"The county treasurer of the county issuing such bonds is hereby authorized to sell and dispose of all such bonds in the manner hereinafter provided. Said treasurer, under the

direction of the county court, shall cause notice to be published for thirty days, in at least two daily papers published in the state and one weekly paper published in the county, that sealed proposals for the purchase of all or a part of said bonds as may appear in said notice will be received at his office, and that the same will be opened by him in the presence of the county court on the day and hour mentioned in the notice. Said treasurer may, under the direction of the court, reject any or all bids that the court may not deem satisfactory as to price or otherwise, and in case of rejection, he may again advertise and sell said bonds in the same manner; or if the court so order, he may sell them at not less than their face value, at private sale, and report the same to the court at the next term thereafter."

I.

In answer to your first question as to whether or not the bonds must be advertised as stated in Section 2911, quoted supra, we call your attention to the fact that the section states that the county treasurer "shall cause notice to be published" etc. The verb "shall" when used in a statute is usually construed by our courts as mandatory and not directory and we think the statute is plain in its terms and must therefore be complied with. Accordingly, we rule that the bonds must be advertised as stated in the Section.

II.

In your second question you desire to know whether the County Court can sell bonds at private bids without advertising such bonds.

Of course, having ruled that bonds must first be advertised, it would appear that the same would answer your second question. However, we assume that you refer to the last clause in the statute, "or if the court so order, he may sell them at not less than their face value, at private sale, and report the same to the court at the next term thereafter."

We think that the only construction to be placed upon said statute is, first, that the bonds must be advertised for bids; second, that after the court has considered the proposals for the purchase of the bonds the court may order the treasurer to reject any or all bids; and, third, that the court may order the treasurer to again advertise the bonds in the same manner.

As far as we can ascertain from our research, the statute (Section 2911, supra) has never been passed upon or construed by our courts. In the case of *White v. Scarritt*, 341 Mo. 1004, l. c. 1013, the statute in question is mentioned, but only incidentally, but we think that it throws some light on what will be our ultimate construction of the same. In said case it is said:

"On January 11, 1932, the treasurer received only one bid. It was a very low bid, coupled with numerous conditions, and particularly required a disposition of the injunction suit. The court rejected the bid and directed the treasurer to negotiate a private sale of the bonds under Section 2911, Revised Statutes 1929, subject to the approval of the court."

The statute uses the words, "may again advertise," making the matter directory for the second advertisement of the bonds. Therefore, in answer to your specific question, we are of the opinion that the bonds must be first advertised as directed in the statute. If all bids are rejected by the

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County Court the County Court can then direct that the bonds be re-advertised or then may sell them at not less than their face value at private sale; but we are of the opinion that no private sale can be made until the bonds are advertised in the manner as contained in the statute.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

W. J. BURKE
(Acting) Attorney-General

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