

COUNTIES: Counties under 70,000 population cannot issue anticipation warrants under Section 2097, R.S. Missouri, 1929.
DRAINAGE : Drainage districts cannot go into voluntary bankruptcy
DISTRICTS: or cannot be forced into involuntary bankruptcy.

July 1, 1939

Hon. Joseph L. Gutting
Prosecuting Attorney
Clark County
Kahoka, Missouri



Dear Sir:

This department is in receipt of your request for an official opinion upon two propositions. The first question which you present is as follows:

"This county does not have a population of any ways near 70,000 inhabitants, and I am wondering if this county can issue notes in anticipation of revenue to be collected for this year? This Court seems to think that this county can do it under section 2097 R.S. Mo. 1929 and subsequent sections, but my advice to them that those sections only apply to counties with a population of between 70,000 and 90,000 inhabitants and therefore would not apply to this county which only has about 16,000 inhabitants."

I have examined the statutes relative to county courts issuing notes against the anticipated revenue. Article 6, Chapter 9 appears to refer exclusively to counties of certain population. Sections 2095 to 2110, inclusive, contain a complete scheme for the manner in which said notes may be issued, how paid and the penalties thereon.

Independent of the first section, 2095, which fixes population, we have examined the laws of 1925,

July 1, 1939

page 175, and find the title to the act contains the expression, "in all counties of this state which may now or hereafter have not less than seventy thousand inhabitants, nor more than ninety thousand inhabitants, as shown by the last preceding decennial federal census".

We, therefore, agree with you in your contention that the County Court of Clark County is unable to issue notes in anticipation of the revenue to be collected for the year 1939 because said county cannot qualify under Article 6, Chapter 9 for the reason it does not have a population of "not less than seventy thousand inhabitants, nor more than ninety thousand inhabitants".

Your second question is as follows:

"Can an incorporated Drainage District go into voluntary bankruptcy or can it be forced into involuntary bankruptcy and if so what is the procedure?"

It appears that under Chapter 9, Section 81, entitled "Additional Jurisdiction" (Bankruptcy Forms and Practice, Menin and Herzog, 2nd Edition) and along with what is known as 77b of the Bankruptcy Act of 1935 and as amended by Congress in 1938, that a taxing agency or instrumentality was declared to be within the subject of bankruptcy. The provisions and procedure are very voluminous and we will be unable to quote all of the procedure. Subsection 84 states in substance that the court shall not have any jurisdiction after June 30, 1940, except in respect of any proceeding initiated by filing of petition on or prior to June 30, 1940.

Section 81 is as follows:

"This Act and proceedings thereunder are found and declared to be within the subject of bankruptcies and, in addition to the jurisdiction otherwise exercised, courts of bankruptcy

shall exercise original jurisdiction as provided in this chapter for the composition of indebtedness of, or authorized by, any of the taxing agencies or instrumentalities hereinafter named, payable (a) out of assessments or taxes, or both, levied against and constituting liens upon property in any of said taxing agencies or instrumentalities, or (b) out of property acquired by foreclosure of any such assessments or taxes or both, or (c) out of income derived by such taxing agencies or instrumentalities from the sale of water or power or both, or (d) from any combination thereof; (1) Drainage, drainage and levee, levee, levee and drainage, reclamation, water irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts, organized or created for the purpose of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes; or (2) local improvement districts such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts such as road, highway, or other similar districts, organized or created for the purpose of grading, paving or otherwise improving public streets, roads, or highways; or (4) public-school districts or public-school authorities organized or created for the purpose of constructing, maintaining, and operating public schools or public-school facilities; or (5) local improvement districts such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities; or (6) any city, town

July 1, 1939

village, borough, township, or other municipality: Provided, however, That if any provision of this chapter, or the application thereof to any such taxing agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different taxing agency or district or class thereof or to any other or different circumstances, shall not be affected by such holding."

It may be possible that you can obtain the exact procedure by conferring with the referee in bankruptcy.

Respectfully submitted,

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