

BOND ISSUES: Funds raised to pay bonded indebtedness cannot be transferred and applied to the payment of general indebtedness.

May 1, 1940

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Hon. Eldon W. Palmer
County Clerk
Poplar Bluff, Missouri



Dear Sir:

This will acknowledge receipt of your letter of April 26th, directed to the attention of Mr. Hewitt, in which you have asked for an opinion upon the following question:

"Relative to our conversation in your office yesterday regarding the surplus in the Court House & Jail Bond fund of this county and the need of transferring said fund to another that is badly in need of same.

Excessive levy for Court House & Jail Bonds has resulted in a surplus in this fund for the year 1939, which is no longer needed for the year as all the bonds and interest are paid and cancelled for the year 1939.

May we transfer this surplus which accrued from excessive levy to other funds that is badly in need, since we believe this arrangement will be satisfactory to the bond holders, and since we are obliged to pay 6% interest on the warrants that are outstanding, and if this transfer can be made it will mean quite a saving to this County.

A levy is made each year for the retirement of bonds and interest on the Court House & Jail, and the last bonds will be paid in the year 1948."

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Authority for the issuance of bonds by counties to build public buildings and the levy of the tax for the payment of such bonds and the interest thereon, is granted by Section 11, Article 10 of the Constitution of Missouri. The same section also limits the rate of taxation by counties for general county purposes. Such section is, in part, as follows:

"Taxes for county, city, town and school purposes may be levied on all subjects and objects of taxation; but the valuation of property therefor shall not exceed the valuation of the same property in such town, city or school district for State and county purposes. For county purposes the annual rate on property, in counties having six million dollars or less, shall not, in the aggregate, exceed fifty cents on the hundred dollars valuation; in counties having six million dollars and under ten million dollars, said rate shall not exceed forty cents on the hundred dollars valuation; in counties having ten million dollars and under thirty million dollars, said rate shall not exceed fifty cents on the hundred dollars valuation; and in counties having thirty million dollars or more, said rate shall not exceed thirty-five cents on the hundred dollars valuation. * * *

* * * Provided, The aforesaid annual rates for school purposes may be increased, in districts formed of cities and towns, to an amount not to exceed one dollar on the hundred dollars valuation, and in other districts to an amount not to exceed sixty-five cents on the hundred dollars valuation, on the condition that a majority of the voters who are tax-payers, voting at an election held to decide the question, vote for said increase. For the purpose of erecting public buildings in counties, cities or school districts, the rate of taxation herein limited may be increased when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and two-thirds of the qualified voters of such county, city or school district, voting at such election, shall vote therefor."

Section 12, Article 10 of the Constitution of Missouri, limits the amount of indebtedness which may be incurred

by political corporations or subdivisions of the State under authority of the exceptions contained in Section 11.

Pursuant to the authority of Section 11, Article 10 of the Constitution, Article 5, Chapter 15, R. S. Mo. 1929 has been enacted. This article lays down the procedure to be followed in submitting such proposition to the voters, and the issuance of the bonds when the proposition carries, the levying of a tax to pay the interest and principal of the bonded indebtedness and the creation of a sinking fund.

The funds collected under a tax levy for general county purposes are the property of the county and are to be applied by the county court, first, for items of general expense under their statutory classification; second, to any other lawful county purpose when there is a surplus in any of the various funds over and above the debts for the year for which the tax was levied. This being authorized by Sections 12167 and 12168 R. S. Mo. 1929, and cases of State ex rel. v. Appleby, 136 Mo. 408 and Decker v. Diemer, 229 Mo. 296.

The funds collected under a special levy for the payment of principal and interest of a bonded indebtedness are not the property of a county, but are collected by it as trustee for the bondholders, it being a special fund raised for a particular purpose.

"Taxes which are set apart by the constitution of the state for particular uses cannot be diverted by the legislature to any other purpose, and neither can funds derived from taxes levied and collected for particular purposes be legally utilized for, or diverted to, any other purpose, some constitutional provisions expressly so providing." 61 C. J. Para. 2235, p. 1521.

In the case of State ex rel. Hopper v. Cottengin, 172 Mo. 129, a case in which it was sought to compel a county to pay a general judgment from a fund raised by taxation for the purpose of building a court house the Supreme Court, at page 135 said:

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"The fund in question was no part of the general revenue fund of the county. It was a special fund raised for a particular purpose, and neither the county court nor the county treasurer had any right to apply a dollar of it to any other purpose. If, on the one hand, the bonds are valid, and the taxes were legally levied, the bondholders are entitled to it. If, on the other hand, the bonds are invalid, or the taxes were illegally levied, the taxpayers from whom it was illegally and wrongfully wrested are entitled to it. In neither event is the county entitled to it, and in neither event is it applicable to its general indebtedness."

CONCLUSION.

It is the conclusion of this department that there can be no transfer of a surplus in the court house and jail bond fund for the purpose of paying general county obligations as long as there remains any portion of the bonded indebtedness outstanding and unpaid.

In your request for opinion you mention that your county is obliged to pay six per cent interest on outstanding protested warrants. An opinion written January 25, 1939, by Max Wasserman, Assistant Attorney General, to Mr. Paul J. Clay, Clerk of the County Court, St. Francois County, Farmington, Missouri, on the subject of reducing interest on county warrants is enclosed herewith. It may be of some assistance to your county court.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General.

WOJ:CP