

MUNICIPAL CORPORATIONS: A city of the Fourth Class may issue bonds to erect a library building.

December 11, 1940



Hon. Carl E. Williamson  
Prosecuting Attorney  
Doniphan, Missouri

Dear Sir:

This will acknowledge receipt of your letter of December 5, 1940, in which you asked for an opinion upon the following question:

"Does a City of the Fourth Class have the authority to levy bonds for the construction and maintenance of a Public Library?"

A city is a municipal corporation, and is created by a grant from the State, and to ascertain its powers it is necessary to look into the law under which it is created. The City of Republic v. Smith 139 S. W. (2d) 929, l. c. 932 is as follows:

"Of course, relator has only such powers as are conferred upon it by the State. Such powers are found in Article 8, Chapter 38, Sections 6946 to 7090 inclusive, Revised Statutes of Mo., 1929, and amendments thereto, Mo. St. Ann. Sections 6946-7090, pp. 5714-5791."

This was an action by a city of the Fourth Class.

Section 6946 R. S. Mo. 1929, which is found in the article and chapter referred to in the above quotation, in enumerating some of the powers of cities of the Fourth Class, has among others the following clause:

"\* \* \* and may purchase, hold, lease, sell or otherwise dispose of any property, real or personal it now owns or may hereafter acquire;  
\* \* \*"

Section 7030 of the same article and chapter is as follows:

"Bonds may be issued for erection or purchase of public buildings, bridges, waterworks, electric light plants and ice plants, public parks, and other improvements, and for establishing and maintaining a fire department. The board of aldermen shall have power to borrow money and issue bonds for the payment thereof, within the limits prescribed by the Constitution, for the purpose of erecting waterworks, electric light works, public parks and ice plants, or acquire the same by purchase; also a city hall and other public buildings and improvements and for furnishing the same, and for the erection of public bridges across streams dividing counties, if located within one mile of its corporate limits, the expense of building said bridges to be borne in part by the counties, as provided for by section 7903, R.S. 1929, but bonds for the purpose aforesaid shall not be issued until two-thirds (2/3) of the legal voters of such city, voting at an election held for that purpose, have assented thereto, in accordance with article 10, chapter 38, R. S. 1929."

In Article 10, of Chapter 38, which is a general act applicable to all cities and towns, is Section 7217, which provides as follows:

"The various cities, towns and villages in this state, whether organized by special charter or under the general laws of the state, may contract a debt or debts in excess of the annual income and revenue for any such year, for any purpose authorized in the charter of such city, town or village, or by any general law of the state, upon the assent of two-thirds of the legal voters of such city, town or village voting at an election held for that purpose: Provided, such indebtedness so to be contracted shall not, with the existing indebtedness of such city, town or village, ex-

ceed in the aggregate five per cent on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for state and county purposes previous to the incurring of such indebtedness; and provided further, that the proper authorities of every such city, town or village incurring such indebtedness shall, before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting same."

In the same article and chapter is Section 7218, which makes provision for the holding of an election for the purpose of submitting to the voters any proposition in accordance with the terms of Section 7217, and for publishing notice of such election. Section 7219 directs the form of ballot to be used at such election, and Section 7220 authorizes the board of aldermen to issue bonds on any such proposition as carried.

It will be observed that a city of the Fourth Class has power to purchase land; to erect a city hall and other public buildings; to issue bonds in excess of revenue provided for any one year, for the purpose of erecting a city hall and other public buildings, and to levy taxes at a rate higher than prescribed in Section 11, Article 10 of the Constitution for the purpose of paying such bonds and the interest thereon.

Section 11 of Article 10 of the Missouri Constitution limits the rate of taxes that may be levied by any city but authorizes an increase above the prescribed limit, for the purpose of erecting public buildings.

"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

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two-thirds of the qualified voters of such county, city or school district, voting at such election, shall vote therefor."

Section 12 of the same article of the Constitution limits the amount of indebtedness which a city may incur.

Inasmuch as cities have the power to erect buildings, it remains to be seen whether or not a public library would be within the contemplation of the law which confers authority for the erection of buildings. We find no decisions in this State where a legal meaning of these two words has been declared, but in Volume 35, Permanent Edition of Words and Phrases, at page 156, we find the following definition:

"The term 'public library,' in 1 Rev. St. 388 Sec. 4, subd. 5, exempting every public library from taxation, includes the library of the American Geographical Society, which is kept by such society free and open to all. So long as the general public continue to have free access to this extensive and valuable library, surely it is practically, and to all intents, and purposes, a public library. Under such circumstances to criticise the library as but an incident to the relator's purposes would seem to be ungracious. The words 'public library' are not technical. They have acquired by judicial decisions no precise legal meaning. They are words of common use, and ought, therefore, as between the public, which is invited to a free enjoyment, and a disinterested society, such as the relator, to be interpreted as they are commonly understood. *People v. Tax and Assessment Commissioner, N.Y., 11 Hun. 505, 507.*"

The Legislature is the proper judge of what is the proper purpose to which tax money may be applied. The General Assembly of Missouri in Article 5, Chapter 99 R.S. Mo. 1929, has recognized that the erection of a public library is a proper use of tax money, and provides in that article that cities, towns, and villages may upon certain conditions establish and maintain public libraries, and may erect buildings therefor.

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CONCLUSION.

It is the conclusion of this Department that a city of the Fourth Class may issue bonds within the limits prescribed by the Constitution, for the purpose of erecting a public library building, but we find no authority to use the proceeds of the bonds for the purpose of establishing or maintaining the library.

Respectfully submitted,

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APPROVED:

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WCJ/mc