BANKS AND BANKING:
MUNICIPAL CORPORATIONS:
BONDS:

Savings banks may not invest in municipal bonds when the bonded debt of the city exceeds 5%, under Sec. 8102, 1939.

May 9, 1942

FILE 37

Hon. D. R. Harrison
Commissioner of Finance
Jefferson City, Missouri

Dear Mr. Harrison:

This is to acknowledge receipt of your letter of recent date in which you request our opinion. Your request is found in two letters from the Bond Department of the Commerce Trust Company of Kansas City, Missouri, and we herewith set forth both letters, as follows:

1. "One of our clients recently placed his business in the hands of a trust department, and one of the requirements in the trust agreement states that the trust department may purchase Missouri municipal bonds provided said bonds conform to laws governing State Savings Banks of Missouri. We recently submitted to this trust department a block of bonds to be considered for this particular estate, and the question was raised as to whether or not this particular block of bonds could qualify as the gross debt of the city was 12%, and after deducting the water and light bonds this city had a net debt of 2% of the assessed valuation.

   "Our attention has been called to Section 8102, the fourth section thereof, which states 'such bonded debt does not exceed 5%.' We would like to have an interpretation of this section as to whether the 5% means the gross or the net debt."

2. "We have your letter of April 29, in which you ask us to give you more particular information with reference to municipal

bonded indebtedness, and we enclose herewith a circular on the city of Kennett, Missouri, which clearly brings out our point in question.

"The total bonded debt, including the $60,000 Electric Light Plant bonds, is $201,000, or 11 1/2% debt, and after deducting the Waterworks and Light Bonds in the amount of $166,000 we have a net bonded debt of $35,000, or 2% of the assessed valuation. It is common practice to deduct the waterworks and light plant bond issues, they being classed as a utility and being self-supporting. Therefore, the amount of the tax levied on the valuation would be for the purpose of paying the $35,000 bonds which were issued for other purposes. While all of the $201,000 bonds are payable from an ad valorem tax, such tax is not generally levied as the utility bonds are self-supporting and are paid from the earnings of the utility.

"We, therefore, would like to have a ruling as to the interpretation of the bonded debt as referred to in our letter - whether we should consider it as a total bonded debt or the net bonded debt."

The above letters state that the city of Kennett has a gross bonded indebtedness of $201,000; $166,000 of which are Waterworks and Electric Light Plant bonds and $35,000 are other bonded indebtedness of the City of Kennett. It is also stated that the $166,000 Waterworks and Electric Light Plant bonds are, seemingly, classified as different from the $35,000 other bonded indebtedness of the city, for the reason that utility bonds are self-supporting; that is, the debt is payable out of the earnings of the utilities, notwithstanding the fact that both principal and interest are payable from unlimited ad valorem taxes which may be levied upon all the taxable property located in the City of Kennett. In other words, they call the $201,000 the gross debt of the city, and after deducting the $166,000 Waterworks and Electric Light Plant bonds from the total indebtedness, they call the $35,000 the net debt of the city. The $35,000 was evidently

voted under the provisions of Article 10, Section 12 of the Constitution of Missouri, and the $166,000 under the provisions of Article 10, Section 12a of the Constitution of Missouri.

Section 12, supra, limits the amount of debt a city of the size of Kennett may vote to five per centum of the value of the taxable property therein, and Section 12a, supra, states that cities under thirty thousand population, of which Kennett is one, may vote "not exceeding an additional ten per centum on the value of the property therein for the purpose of purchasing or constructing waterworks, ice plants, electric or other light plants, to be owned exclusively by the city so purchasing or constructing the same." (Underscoring ours)

After the above statement of facts, we come to the question which they ask. The trust company states that they have a trust agreement in their trust department which provides that they may purchase Missouri municipal bonds, provided said bonds conform with the laws governing savings banks in the State of Missouri.

Section 8102, R. S. Mo. 1939, sets forth the class of securities which may be purchased by savings banks in this state, and the fourth subdivision of said section, applicable herein, provides:

> "Fourth - In bonds of any city, county, town, township or school district of this state that has not defaulted in the payment of any part of either principal or interest thereof, within five years previous to making such investment; and provided, such bonded debt does not exceed five per cent."

It will be noted that municipal bonds may be purchased by said savings banks, provided such bonded debt does not exceed five per cent. This statute does not make any distinction between the different kinds of municipal bonds, whether they be general bonds voted under Section 12, Article 10, of the Constitution of Missouri, or whether they be waterworks and electric light plant bonds voted under Section 12a, Article 10, of the Constitution of Missouri.

The statute does not make any distinction between the different kinds of bonds of a city, whether they be general bonds of a city or waterworks and electric light bonds, or any other bonds. All are obligations of the city to pay, and the property therein is liable therefor, through an ad valorem tax. The Legislature intended that savings banks should not invest their assets in bonds of a city where the bonded debt exceeded five per centum.

CONCLUSION

The combined bonded indebtedness of the City of Kennett, according to the calculation of the Commerce Trust Company, is approximately 11½%. Therefore, bonds of the City of Kennett would be ineligible for investment for the trust estate mentioned in their letters, for the reason that such bonded debt exceeds five per centum, as provided in Subdivision 4, Section 8102, R. S. Mo. 1939.

Respectfully submitted,

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APPROVED:

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Attorney General

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