

HOSPITALS: City ordinance did not provide authority for
MUNICIPALITIES: use of hospital fund in the erection of an addition. If doubt arises out of the use of words employed, it is to be resolved in favor of the public and in favor of limiting the expenditures of the appropriation to the express terms for which it was made.

March 25, 1944



Honorable Howard Couch
City Counselor
Nevada, Missouri

Dear Sir:

We are in receipt of your letter of March 15, 1944, in which you request an opinion from this department. Your letter reads as follows:

"In 1937 the City Council of Nevada adopted Ordinance No. 1782, copies of Sections 1, 2, 3 and 4 of said Ordinance being attached hereto. Sections 5 and 6 of the Ordinance merely set the polling places and named the Judges of the election. Section 7 authorized the City Clerk to prepare and obtain the election supplies.

"Ordinance 1785 of the City of Nevada was the Ordinance finding and declaring the results of the above-mentioned election. The vote on the Proposition was 807 in favor of the Proposition and 190 against it.

"The above Proposition was submitted under what is now Section 7036 R.S. Mo. 1939.

"Previously the City of Nevada had voted \$75,000.00 in bonds to build a hospital and the hospital had been built and a Board of Trustees appointed who are operating the hospital.

"The hospital has now become overcrowded and the hospital Board has accumulated a sum in excess of \$20,000.00 derived from taxes levied under the provisions of the Proposition adopted in the election October 19, 1937. The hospital Board of said City desires to use all or a portion of said money to build an extension or addition to the hospital and to equip it. The question has arisen, however, as to authority of the hospital Board to expend monies derived from taxes levied under provisions of the election held under Ordinance 1782 and also as to the use of any future monies which might be derived from such taxes in constructing an extension or addition to the hospital. I would appreciate it very much if you would advise me as to the legality of the use of tax money so derived by the hospital Board for the building of an addition to the hospital and equipping such addition."

Ordinance No. 1782 provides for a special election for the purpose of levying a tax to pay for the "equipping, operating and maintaining" of a City Hospital. We think it unimportant that the form of ballot states a purpose of "operating and maintaining" a City Hospital, excluding the word "equipping" as it appears in the body of the ordinance. We believe that the words "operating and maintaining" would of necessity carry with them the authority to equip since the hospital could not be operated nor maintained without equipment. The City Hospital has been erected and completed. The question presented now is whether, under Ordinance No. 1782, the Board has the right to expend money of the hospital fund for the construction and erection of an addition to the hospital, or whether they are bound to confine expenditures solely to operation and maintenance of the present hospital.

Section 7036, R. S. Missouri, 1939, reads as follows:

"When one hundred taxpaying voters of any city of the third class in this state shall petition the mayor and council asking that

an annual tax be levied for the establishment, either by purchase or otherwise or leasing, equipping and maintaining a hospital in such city for the care and the treatment of the sick and disabled therein, which said petition shall specify the rate of taxation not to exceed two mills on the dollar annually, such mayor and council shall direct the proper officer of the city to give notice in the next legal notice of the annual election or special election which may be called for the purpose of voting on such question that at such election every voter of the city might vote 'for a ___ mill tax for such hospital purposes,' or 'against a ___ mill tax for hospital purposes,' specifying in such notice the rate of taxation mentioned in said petition, and if two-thirds of the qualified voters voting at such election on said proposition shall vote for such tax the said tax specified in such notice shall be levied and collected in like manner as other general taxes of said city and shall be known as 'hospital fund': Provided, that said tax shall cease in case the legal voters in such city shall so determine by a majority vote at any annual election held therein."

Under this section of the statutes, the City of Nevada, Missouri, can, by a two-thirds vote of the inhabitants, levy an annual tax "for the establishment, either by purchase or otherwise or leasing, equipping and maintaining a hospital in such city for the care and the treatment of the sick and disabled therein, * * *."

In State ex rel. Case v. Wilson, 151 Mo. App. 723, 1. c. 726, the court said:

"Municipal corporations possess only such powers as are granted in express words, or those necessarily incident to or implied in

the powers expressly granted. (City of Independence v. Cleveland, 167 Mo. 384, 67 S. W. 216.) And if there is a fair, reasonable doubt concerning the existence of power in the charter of a city, it will be resolved against the city and the exercise of the power denied. (State v. Butler, 178 Mo. 272, 77 S. W. 560.)

"The object of all interpretation of law is to reach the true intent and meaning of the law-making authority. (Grimes v. Reynolds, 94 Mo. App. 576, 68 S. W. 588.)
* * *"

There can be no question, after reading the above section of the statute, that the City of Nevada has the authority to build or lease and operate a City Hospital. May the power to construct an addition to the already established hospital be implied under Ordinance No. 1782?

The Supreme Court stated in Meyers v. Kansas City et al., 18 S. W. (2d) 900, 1. c. 901:

"The ordinance, No. 55,585, in which proposition 8 appears, contains no grant of power, other than that clearly comprehended within the words employed. There is no room, therefore, for the application of the doctrine of implied powers. This is especially true of a grant of powers to a corporation, municipal or otherwise, and if any doubt arises out of the use of the words employed, it is to be resolved in favor of the public and in limiting the expenditures of the appropriation to the express terms for which it was made. State ex inf. Harvey v. Missouri Athletic Club, 261 Mo. 576, 598, 170 S. W. 904, L. R. A. 19150, 876, Ann. Cas. 1916D, 931.

"Another general rule in the construction of statutes, applicable as well to municipal ordinances, is that acts of the charac-

ter here under review are to be strictly construed. The limitation upon the use of the appropriation in proposition 8 is such, by reason of its terms, that the invoking of the general rule is not necessary."

The Meyers case was quoted with approval in the case of *Meyering v. Miller, Mayor, et al.*, 51 S. W. (2d) 65, l. c. 67. In the *Meyering* case there was under consideration an ordinance of the City of St. Louis submitting a bond issue to the voters which set forth the purposes for which the proceeds of the bonds should be used in the following language:

"For the acquisition of land and the construction of additions and extensions and equipment of public hospitals and institutions for the care of delinquents and the indigent tubercular, insane, feebleminded, infirm and sick patients, * * *."

Out of the proceeds of the sale of the bonds so voted, the city proposed to erect an entirely new hospital located more than four miles from existing hospitals, and it was contended that this would be a misappropriation and misapplication of the funds. The court held that the language employed authorized the erection of new and separate hospital units as well as increasing the size of existing hospitals.

The Supreme Court stated in the case of *State ex rel. State Building Commission et al. v. Smith, State Auditor*, 81 S. W. (2d) 613, l. c. 615:

"There is a well-settled rule applicable to a grant of power to a corporation, municipal or otherwise, recognized in this state, and elsewhere, that if any doubt arises out of the use of words employed, it is to be resolved in favor of the public and in limiting the expenditures of the appropriation to the express terms for which it was made. *Meyer v. Kansas City*, supra. But can it be said to be doubtful as to whether equipment

of the character hereinbefore described comes within the purposes of a bond issue to 'repair, remodel or rebuild public buildings devoted to eleemosynary and penal purposes, and for building additions thereto, and additional buildings where necessary?' We think not. There is nothing in the language used to indicate an intention on the part of the voters to authorize the expenditure of the bond money for the purposes in question, and we accordingly hold that equipment of the character mentioned does not come within the terms of the constitutional amendment. * * *

The Supreme Court stated in the case of City of St. Louis v. Senter Commission Co et al., 85 S. W. (2d) 21, l. c. 24:

* * * * The primary rule of construction of statutes or ordinances is to ascertain and give effect to the lawmakers' intent. Meyer-ing v. Miller, 330 Mo. 885, 51 S. W. (2d) 65; Cummins v. Kansas City Public Service Co., 334 Mo. 672, 66 S. W. (2d) 920. This should be done from the words used, if possible, considering the language honestly and faithfully to ascertain its plain and rational meaning and to promote its object and manifest purpose. * * *

In view of the above and foregoing cases, it seems to us impossible to interpret the words "equipping, operating and maintaining" so as to confer authority to construct or erect an addition

Section 7040, R. S. Missouri, 1939, provides:

"The board shall control the expenditures of all moneys collected to the credit of the hospital fund, and the construction, leasing, equipping of such hospital and the grounds and other property real and personal belong-

ing to such hospital: Provided, all moneys from taxes, donations and from any other source shall be deposited in the city treasury to the credit of the hospital fund, and drawn upon by the vouchers of the proper officers of such board. The board shall also employ such help, professional and otherwise, as may be necessary to carry out the spirit and intent of sections 7036 to 7043, inclusive, and all such assistants and employees shall serve at the pleasure of the board."

This section gives the board control of the money and authority to supervise the construction, leasing and equipping, and power to operate the hospital, but goes no further as regards providing additions.

If there can be said to be any doubt as to the meaning of the words contained in the ordinance, then under the statement made in State v. Smith, supra, that doubt is to be resolved in favor of the public and in limiting the expenditures of the appropriation to the express terms for which it was made.

CONCLUSION

It is the opinion of this department that the Board of Trustees of the City Hospital of Nevada, Missouri, would have no authority to use funds derived from a tax levied under and in accordance with Bill No. 1937-41, Ordinance No. 1782, in the construction of an addition to the City Hospital.

In the event an addition is added to the hospital, these funds could be used for the purpose of equipping, operating and maintaining the City Hospital, which would include the addition.

Respectfully submitted

RALPH C. LASHLY
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APPROVED:

ROY McKITTRICK
Attorney General

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