

TOWNSHIPS: Debts in excess of anticipated revenue are invalid.

August 31, 1944.

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Mr. H. A. Kelso,
Prosecuting Attorney
Vernon County,
Nevada, Missouri.

Dear Sir:

Your letter of August 3, 1944, is as follows:

"In my official capacity as assistant prosecuting attorney of Vernon County, Missouri I would like your opinion on the following set of facts:

"Vernon County, Missouri is under township organization. In November of this year a vote will be taken to determine whether or not it shall so remain or whether it shall change over to county organization.

"In one of our townships some several years ago they, the township board, purchased farm road grading equipment far in excess of its anticipated revenue. This debt has never been paid and is at present something over \$3000.00. A local attorney has advised the board that in the event that this county adopted county organization neither the township nor the county could be held for this debt and that the members of the township board would be personally and individually liable for this debt.

"My questions concerning this matter then are as I have outlined as follows:

- "1. Is the debt a valid debt against the township?
- "2. If this county should adopt township organization would the county be liable for this debt (assuming that it is a valid debt)?
- "3. If the debt is not a valid debt against the township or county would the township board or the members thereof be liable and if so would it be the members who contracted the debt or would it be the present board members?"

Section 12, Article 10 of the Constitution provides:

"No county, city, town, township, school district or other political corporation or subdivision of the state shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year,***."

In your letter you state that the debt for road machinery was, at the time contracted for, in excess of the township's anticipated revenue for that year. With that statement nothing remains for us to pass upon, since the above constitutional provision clearly prohibits a township from becoming so indebted. Invariably the courts have held such debts void. Many cases so holding will be found in the annotations to Section 12, Article 10, Mo. R.S.A., and see the late case of Missouri Toncan Culvert Co. v. Butler Co., 181 S.W. (2d), 506 (Mo. Sup.).

This view renders it unnecessary to consider your second question, and as to the third question we can only say that it is not our function to determine the respective rights and liabilities of the machinery company or of the present or past members of the township board. However, some idea of the court's views of this subject may be gained from Jacquemin and Shenker v. Andrews, 40 Mo. App. 507, and the annotation appearing in 87 A.L.R. 273.

CONCLUSION.

It is our opinion that debts of a township, contracted in excess of the anticipated revenue for that year, are void and the township is not liable for their payment.

Respectfully submitted,

LAWRENCE L. BRADLEY
Assistant Attorney General

APPROVED:

ROY McKIPTRICK
Attorney-General

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