

SPECIAL ROAD DISTRICTS: Board of commissioners of special road district (benefit assessment type) may issue warrants up to amount of revenue anticipated for year in which such warrants are issued, and may by contract provide protested warrants shall bear interest at a specified rate. If no such provision is in the contract, protested warrants shall bear interest at 6%.

October 10, 1946



Honorable Clark H. Gore
Prosecuting Attorney
Atchison County
Rock Port, Missouri

Dear Sir:

Reference is made to your letter of recent date, requesting an official opinion of this department, and reading as follows:

"The County Treasurer and County Court of Atchison County have asked me to write you for an opinion on the following matter:

"Is it permissible for a road district organized under Article 11 of Chapter 46 (benefit assessment) to issue protested warrants which bear a fixed rate of interest?"

Section 8717, R. S. Mo. 1939, provides that the commissioners of a road district organized under the provisions of Article 11, Chapter 46, R. S. Mo. 1939, may issue road and bridge bonds for their district, and that such bonds may be sold and the money used for certain purposes in the district. The entire amount of the money to be spent in the district, under this section, is realized by sale of the bonds.

Section 8721, R. S. Mo. 1939, provides for an assessment of property in the district for special benefits, and provides that special tax bills shall be issued against the land, and if such tax bills are not paid, the commissioners may borrow money on said tax bills.

Section 8722, R. S. Mo. 1939, provides that when the special tax bills issued against land on special assessments are to be paid in annual installments, the commissioners

shall issue special assessment bonds of the district, and shall sell said bonds to obtain the money for the work authorized to be done under the special assessment.

Section 8714, R. S. Mo. 1939, provides that the commissioners of the special road district shall have sole, exclusive and entire control and jurisdiction over all public highways, bridges and culverts within the district, to construct, improve and repair such highways, bridges and culverts, and shall have all the power, rights and authority conferred by law upon road overseers, and shall at all times keep such roads, bridges and culverts in as good condition as the means at their command will permit, and for such purpose may employ hands and teams at such compensation as they shall agree upon; rent, lease or buy teams, implements, tools and machinery, all kinds of motor power, and all things needed to carry on such work: Provided, that said commissioners may have such road work, or bridge or culvert work, or any part thereof, done by contract, under such regulations as said commissioners may prescribe.

Section 8715, R. S. Mo. 1939, provided for the levying of taxes in the district by the county court, and that such taxes raised from property situated in a special road district shall be turned over to said special road district, and the commissioners of such road district shall have power to spend this money.

Section 8715, R. S. Mo. 1939, was repealed by House Bill No. 796, which also repealed Section 8716 and enacted a new Section 8715 in lieu thereof, reading as follows:

"County courts shall cause to be set aside and placed to the credit of each road district so incorporated four-fifths of such part or portion of the tax arising from and collected and paid upon any property lying and being within any such district, by authority of Section 8527. All revenue so set aside and placed to the credit of any such incorporated district shall be used by the commissioners thereof for constructing, repairing and maintaining bridges and culverts, within the district, and working, repairing, maintaining and dragging public roads within the district and paying legitimate administrative expenses of the district, and for such other purposes as may be authorized by law."

Section 8527, referred to in House Bill No. 796, is now found in House Bill No. 784, which bill repealed Sections 8526 and 8527 and reenacted Section 8527.

Section 8713, R. S. No. 1939, provides that the president of the board of commissioners of a special road district shall sign all warrants. The secretary of said board of commissioners shall keep a record of the warrants and attest the same, and the treasurer of the road district shall pay out money only on warrants signed by the president, or vice president in the absence of the president, and attested by the secretary.

From the above statutory provisions, it is clear that the question of whether or not warrants can be protested, and the matter of paying interest on protested warrants, would involve only warrants on the annual amount of moneys provided for the special road district by Section 8715 of House Bill No. 796, since the moneys provided for in the other sections cited are all collected by the district when bonds are issued or when money is borrowed on the special assessment tax bills.

The two questions involved relative to the matter of the protest of warrants, then, are: (1) Can the board of commissioners issue warrants which may be presented for payment and protested by the treasurer because of insufficient funds in the treasury to pay the warrants, and (2) if such warrants can be protested, can the board of commissioners specify the rate of interest that the warrants shall bear.

We hold that the board of commissioners has the power to spend in each year the revenue anticipated in that year, and to issue warrants against such anticipated revenue. The Supreme Court of Missouri, in *Hawkins v. Cox*, 66 S. W. (2d) 539, 1. c. 543, said:

" * * * The contract of purchase being made in February, 1928, the commissioners had a right to contract with reference to the funds then on hand as a cash payment and the anticipated tax collections of that year on the rates levied, as such was 'the income and revenue provided for that year,' but no further. * * *"

It has been held that a county warrant is in effect a promissory note. It is said by the Supreme Court of Missouri in *International Bank of St. Louis v. Franklin County*, 65 Mo. 105, 1. c. 112:

" * * * In short, it is to all intents and purposes the promissory note of the county.
* * *"

In the case of Steffen v. Long, 165 Mo. App. 254, 1. c. 258, it is said:

" * * * A warrant is, in legal effect, a promissory note. * * *"

A warrant from a special road district, of course, is evidence of an indebtedness due by the road district to some person, and is in effect a promissory note of the district.

There is no statutory provision in Chapter 46, Article 11, R. S. Mo. 1939, directing the treasurer of the road district to endorse warrants which have been issued by the district and for which there is no money in the treasury to pay said warrants when presented, as is contained in Section 8703, regarding the payment of warrants by an eight-mile special road district organized under the provisions of Article 10, Chapter 46, or Section 6654, regarding action to be taken by treasurers of cities of the second class when warrants are presented and there is no money in the treasury, or Section 13833, regarding the action to be taken by county treasurers when county warrants are presented and there is no money to pay said warrants, or Section 7346, regarding the treasurer of municipal corporations, found in Article 11, Chapter 38, entitled "Miscellaneous Provisions Applicable to all Cities, Towns and Villages."

The Supreme Court of Missouri said, in regard to the payment of interest on county warrants, in the case of Isenhour v. Barton County, 190 Mo. 1. c. 176, 177, 178:

"It is conceded by the parties that the rule has been, in this State, since 1831, that county warrants bear interest from the date of their presentment for payment and refusal to pay because of no money applicable thereto. (Robbins v. Co. Court, 3 Mo. 57; Skinner v. Platte Co., 22 Mo. 438; State ex rel. v. Trustees, 61 Mo. 158.)

* * * * *

"It has already been pointed out that the statutes relating to county warrants make no provision whatever for the payment of interest

thereon, but that this court has held that they do bear interest and that the general statute in reference to interest is as applicable to such warrants or the debts they evidence, as to any other character of debts. The Legislature evidently intended that such should be the case, and the failure to provide specially for interest was not a mere casus omissus. For ever since 1865 there has been a provision upon the statutes of this State in reference to city warrants, similar to the provisions herein set out as to county warrants and the protesting of the same when there was no money to pay them, except that it was further provided that such warrants so protested should draw legal interest until funds for the payment thereof should be set apart therefor. * * *

"It is obvious, therefore, that the Legislature intended that the general statute in reference to interest should govern such cases. The statute in referring to interest (sec. 3705, R. S. 1899) provides that in the absence of an agreement between the parties, interest shall begin to run after the debt becomes due and demand shall have been made. But the statute contains no provision or regulation as to the demand. Hence the general rules of the common law as to demand apply, for the common law is the law in this State except so far as it has been modified by statute. * * *"

It is provided, however, in Section 3226, R. S. Mo. 1939, as follows:

"Creditors shall be allowed to receive interest at the rate of six per cent per annum, when no other rate is agreed upon, for all moneys after they become due and payable, on written contracts, and on accounts after they become due and demand of payment is made; for money recovered for the use of another, and retained without the owner's knowledge of the receipt, and for all other money due or to become due for the forbearance of payment whereof an express promise to pay interest has been made."

Since the warrants of a special road district are in effect promissory notes, after demand has been made, interest on such warrants will run from the time the demand is made and there is no money in the treasury to pay the same.

However, warrants can be issued only up to the amount of revenue anticipated for the year in which such warrants are issued. The Supreme Court of Missouri said in the case of *Hawkins v. Cox*, cited above, 1. c. 543:

"* * * Municipal corporations, such as are special road districts, are by our Constitution placed on what has been termed a cash basis. This has been accomplished by the provisions of section 12, article 10, of the Constitution, which provides that '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, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose.' The plain meaning of this constitutional provision is that any such municipal corporation may spend or contract to spend (become indebted) 'in any (calendar) year the income and revenue provided for such year,' but beyond that it cannot go in creating a debt for any purpose or in any manner, except by consent of two-thirds of the voters. This was so held in *Book v. Earl*, 87 Mo. 246, where this court said: 'The contracting of a debt in the future, by the county in any manner or for any purpose, in any one year exceeding the revenue which the tax authorized to be imposed would bring into the treasury for county purposes for such year, unless expressly authorized to do so by the assent of two-thirds of the voters' is prohibited. '* * * The evident purpose of the framers of the constitution and the people who adopted it was to abolish, in the administration of county and municipal government, the credit system and establish the cash system by limiting the amount of tax which

might be imposed by a county for county purposes, and limiting the expenditures in any given year to the amount of revenue which such tax would bring into the treasury for that year. Section 12, supra, is clear and explicit on this point. Under this section the county court might anticipate the revenue collected, and to be collected, for any given year, and contract debts for ordinary current expenses, which would be binding on the county to the extent of the revenue provided for that year, but not in excess of it.'

"This provision of the Constitution is self-enforcing and limits the power of this road district 'to become indebted in any manner or for any purpose' beyond the revenues provided for the year. * * *"

The provisions of Section 12, Article X of the Constitution of 1875 are now embodied in Section 26, Article VI of the Constitution of 1945.

The special road district may, then, issue warrants up to the amount of revenue anticipated for the year in which the warrants are issued, and warrants so issued which cannot be paid because of insufficient funds in the treasury will draw interest under the provisions of Section 3226, R. S. Mo. 1939.

It has been held by this department that, under the Constitution of 1875, a county court could make an order setting the rate of interest at five per cent to be paid on protested county warrants on accounts which were consummated and which became due and payable after such order made by the county court, but that warrants which became due and payable before such order is made will bear interest at six per cent, under the provisions of Section 3226, and that protested warrants for paying public officers' salaries should bear interest at six per cent. This opinion was based upon the fact that since the county court, under the Constitution of 1875, is a court of record, the order fixing the interest on protested warrants at five per cent was a public order, and all who contracted with the county did so with notice of such order.

Notice given to all who contracted with a special road district, contained in the written contract entered into by

by the road district, would be sufficient to bind the road district and the person with whom they contracted. The road district, then, may specify in its contracts the rate of interest to be paid on warrants if there is insufficient funds in the treasury to pay said warrants when presented. If no such provision is contained in such contracts, the interest rate on the warrants would be six per cent, as provided in Section 3226.

CONCLUSION

It is the opinion of this department that a road district organized under the provisions of Article 11, Chapter 46, R. S. Mo. 1939, may issue warrants up to the amount of revenue anticipated for the year in which such warrants are issued, and that the road district may provide in its contracts for the rate of interest to be paid on such warrants where there is insufficient funds in the treasury to pay such warrants when presented for payment. If no interest rate is specified in the contracts, such warrants, when presented for payment and not paid because of insufficient funds, shall bear interest at the rate of six per cent per annum.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General