

WATER DISTRICTS: Special obligation revenue bonds payable out
REVENUE BONDS: of income of a public water district are not
REGISTRATION: required to be registered by the State Auditor.

September 27, 1949



Honorable W. H. Holmes
State Auditor of Missouri
Jefferson City, Missouri

Attention: Mr. Alvin C. Papin
Bond Clerk

Dear Mr. Holmes:

This will acknowledge your letter of recent date requesting the opinion of this department whether Special Obligation Bonds payable out of revenues of the Water District issued by a public water supply district under the provisions of Section 12632, R.S. Mo. 1939, should be registered by the State Auditor.

Your letter requesting our opinion on the subject is as follows:

"We enclose herewith copy of letter received from the law offices of Stinson, Mag, Thomson, McEvers & Fizzell, Kansas City, Missouri relating to \$70,000 Revenue Bonds issued by Public Water Supply District No. 1, Jackson County, Missouri.

"You will notice that this law firm desires to know whether or not these Special Obligation Bonds, payable out of the revenues of the Water District, should be registered by the State Auditor. Please let us have your opinion concerning this matter at your early convenience."

With your letter you transmit a copy of the letter of the law firm of Kansas City, Missouri, named in your letter,

counsel for Public Water Supply District No. 1 of Jackson County, Missouri, the water district interested and involved in the question of the registration of bonds payable out of the revenues of the water district recently voted and issued in the sum of \$70,000.00 by the water district, according to the provisions of Section 12632, Article 12, Chapter 79, R.S. Mo. 1939, as amended, in which letter counsel discuss generally the question of whether such bonds must be registered by the State Auditor. That part of Section 12632 defining both general obligation bonds and special obligation bonds of a public water supply district, and providing for the method to be followed in the issuance of each class of such bonds, and the method to be followed in the payment and retirement of each kind of such bonds, is as follows:

"* * * Districts organized under the provisions of this article may issue either general obligation bonds or special obligation bonds, as hereinafter defined: Provided, however, that the type or character of bonds to be issued shall be determined by the board of directors in advance of calling the bond election and shall be stated in the notice of election as hereinabove provided. General obligation bonds, within the meaning of this article, shall be bonds issued within the limitation of indebtedness prescribed under section 12 of article X of the Constitution of Missouri, for the payment of which, both principal and interest, a direct tax may be levied upon all taxable property within the district. Before or at the time of issuing general obligation bonds, the board of directors shall provide for the collection of an annual tax, to be levied upon all taxable property within the district sufficient to pay the interest on such bonds as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the date of such bonds: Provided, however, that the net income and revenues arising from the operation of the waterworks system of such district, after providing for costs of operation, maintenance, depreciation and necessary extensions and enlargements,

shall be transferred to and become a part of the interest and sinking fund applicable to such general obligation bonds, unless or until such net revenues are pledged to the payment of special obligation bonds as hereinafter provided. Special obligation bonds, within the meaning of this article, shall be bonds payable, both as to principal and interest, wholly and only out of the net income and revenues arising from the operation of the waterworks system of any such district, after providing for costs of operation, maintenance, depreciation and necessary extensions and enlargements, and such bonds shall not be deemed to be indebtedness of any such district within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness. Before or at the time of issuing any such special obligation bonds, the board of directors shall pledge such net income and revenues to the payment of such bonds, both principal and interest, and shall covenant to fix, maintain and collect rates for water and water service supplied by such district so as to assure that such net income and revenues will be sufficient for the purposes herein required. * * *."

We are further informed by the letter of counsel for the water district that following a decision by our Supreme Court upholding the constitutionality of the Public Water Supply District Act of 1935, the practice has been followed by water supply districts to obtain registration by the State Auditor of a substantial number of Special Obligation Bonds payable out of the revenues of water supply districts in Jackson County, Missouri, and to some extent, in St. Louis County, because of the direction, as it is said, of your department that such special obligation bonds should be registered by the State Auditor.

We are further advised from the letter of counsel that, if your department requires their registration, under an opinion from this department in this instance, such bonds will be presented to your office for registration.

The letter of counsel refers us to the case of State ex rel. City of Fulton vs. Smith, State Auditor, 355 Mo. 27, 194 S.W. (2d) 302, decided by our Supreme Court in 1946, but,

it is said by counsel, that inasmuch as bonds of this character are not issued under Section 27 of Article VI of the Constitution of Missouri, 1945, the Fulton case does not expressly affect the registration of special obligation bonds of water supply districts. To this we will agree because that case was where a city, and not a water supply district, issued revenue bonds, yet the reasoning and the decision in the Fulton case, on the several legal questions discussed and statutes construed cover every feature of the issuance of special obligation bonds of a water district, payable out of the revenues of the district, and the decision discusses statutes and principles to the conclusion there reached that such bonds are not eligible to registration under Section 3306, Article VI, Chapter 16, R.S. Mo. 1939, so that the Fulton case, is, we believe, the controlling authority for the conclusion to be later herein reached in this opinion that such bonds are not required to be registered by the State Auditor.

Said Section 3306 points out and defines the bonds which shall obtain validity and be negotiable by registration. This section states that before any bond issued by any county, township, city, town, village or school district or special road district or by virtue of the provisions of Articles 1, 3, 6, 7 and 8, Chapter 79, R.S. Mo. 1939, shall become valid or be negotiated such bonds shall be presented to the State Auditor and registered by him. The bonds issued by any of the named public bodies required to be registered by said Section 3306 would necessarily be tax redeemable bonds. They do not include special obligation bonds payable from the net revenue and income derived from the operation of any public utility, such as a public water supply district, and the Fulton case so holds, as we understand the case.

It is further stated in the letter of counsel that special obligation bonds of water supply districts are not issued under the provisions of Section 27, Article VI of the Constitution of Missouri, 1945. This is true, and for two especial reasons, first, because said Section 27 of said Article VI, in defining the public bodies which may vote and sell their negotiable interest bearing revenue bonds must accomplish the object of the vote by a four-sevenths vote of the qualified electors thereof voting thereon, whereas, Section 12632 of Chapter 79, R.S. Mo. 1939, and under which section the public water district in question is organized and under the terms of which the bond issue voted was had, requires that a two-thirds majority vote of the qualified voters of the district voting on the proposition shall assent

thereto. Second, because a public water supply district organized under Article 12 of Chapter 79, R.S. Mo. 1939, is neither a city or incorporated town or village in this State such as are named and permitted in said Section 27 to vote and issue revenue bonds, and under no circumstances, we believe, could a public water supply district proceed to issue revenue bonds under said Section 27. Our Supreme Court had before it the case of State ex rel. Halferty, Collector of Revenue of Clay County vs. Kansas City Light and Power Co., 145 S.W. (2d) 116, on the question of the power to assess and levy taxes against property for the benefit of a public water supply district, and incidentally to determine whether a public water supply district might be known by any other legal name than as a "political corporation" such as a "municipal township". In that case the Collector of Revenue of Clay County, Missouri, undertook by suit to collect taxes from the defendant Power and Light Co. for the benefit of Public Water Supply District No. 1 of Clay County, Missouri. The Collector of Revenue in the prosecution of the case urged that a public water supply district could be, and should be, known and designated as a municipal township, and that under that name and identity as a public body there would be authority in the statutes for the assessment and collection of taxes for the benefit of the water supply district, as a municipal township, on what is known as "distributable" property, the property of defendant so sought to be taxed coming under that description. The Court affirmed the judgment of the Circuit Court, which had held that there was no lawful authority for the levy of the taxes sought to be collected, on the ground that Public Water Supply District No. 1 of Clay County was not a "municipal township" so as to allow the assessment under such name of taxes for its benefit against the property of the defendant. The Court said that a "municipal township" is a "subdivision of a county." In the discussion of the case and in arriving at its decision that the water supply district could not be denominated by any other name than a "political corporation", as was provided in the Act creating public water supply districts (Laws of Missouri, 1935, page 327, et seq.) which provides (Section 2) that such districts shall be "political corporations" of the State, etc., the Court, l.c. 122, said:

"* * * This brings us to consideration of and insistence strongly urged by appellant, viz., that the water district should be regarded as a 'municipal township' within the meaning of these taxing statutes. It,

of course, is not a county nor an incorporated city, town or village. It is denominated a 'political corporation' by the act under which it was organized.
* * * ."

This decision, as an analogous case, in principle and reasoning, supports the statements of counsel, and supports our view here that revenue bonds of a public water supply district may not be issued under Section 27, Article VI of the Constitution of Missouri, 1945, because not named in said section as one of the public bodies there given such power.

The Supreme Court in the Fulton case, l.c. 306 said that by taking a narrow view of Section 3306 the section includes the registration of "* * * 'any bond, hereafter issued by any * * * city* * * for any purpose whatever' before the same 'shall obtain validity or be negotiated.' * * *," that it would seem to include revenue bonds as well as bonds payable through taxation. But, the Court says, this is not the effect of Section 3306, because it must be construed with other sections of the statutes in relation to the registration of bonds, naming Sections 3303 and 3304. The Court fully discusses Sections 3303 and 3304, and, in construing the three sections together, says that they relate solely to bonds payable through the collection of taxes. The Court then states that it is impossible to harmonize Sections 3303 and 3304 with Section 3306, if Section 3306 applies to revenue bonds. In other words, the Court's holding is that the three sections, 3303, 3304 and 3306, do harmonize because they all relate solely to bonds payable through the collection of taxes and that Section 3306 is not applicable to revenue bonds so as to require them to be registered by the State Auditor. The Court states that Sections 3303 and 3304 not only would be in irreconcilable conflict with Section 3306 if Section 3306 included revenue bonds, but also with the constitutional mandate as to the source of payment of revenue bonds of the kind there (and here) in question, "to-wit: solely from the revenues derived by the municipality from the operation of such utility." This is apparently a reference to Section 27 of Article VI of the Constitution of Missouri, 1945, because, as the Court says, the revenue bonds authorized by the constitutional mandate are payable solely out of revenue derived from the operation of the public utility. This is the reason no doubt why counsel in their letter make the cautionary

statement that the bonds in question were not issued under the provisions of Section 27 of Article VI of the Constitution of Missouri, 1945. We think the holding in the Fulton case by our Supreme Court makes it very plain that it construes Sections 3306, 3303 and 3304 of Article VI, Chapter 16, R.S. Mo. 1939, to refer only to bonds payable by taxation, and not to bonds payable from revenue derived from income from the operation of a public utility, and that only bonds payable by taxation are required to be registered by the State Auditor under said sections.

It must then follow that the special obligation bonds, here being considered only as to their registration, issued under the provisions of Section 12632, Article 12, Chapter 79, R.S. Mo. 1939, as amended, and payable, both as to principal and interest, wholly and only out of the net income and revenues arising from the operation of the waterworks system of any such district, after providing for cost of operation, maintenance, depreciation and necessary extensions and enlargement, are not controlled by the terms of said Sections 3306, 3303 and 3304, and are not required to be registered by the State Auditor.

CONCLUSION

It is, therefore, the opinion of this department that, considering the above facts and authorities, special obligation bonds issued by a public water supply district, payable, as to both principal and interest, wholly and only out of the net income and revenue from the operation of the waterworks system of any such district, are not required by the statutes of this State to be registered by the State Auditor.

Respectfully submitted,

APPROVED:

J. E. TAYLOR
Attorney General

GEORGE W. CROWLEY
Assistant Attorney General

GWC:ir