

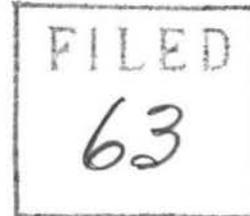
COUNTY HOSPITALS:

Bonds, sinking fund, unexpended balance remaining after creation of sinking fund to be deposited in county hospital fund.

December 7, 1949

12/9/49

Mr. Tom B. Mobley
Prosecuting Attorney
Dunklin County
Kennett, Missouri



Dear Sir:

This is to acknowledge receipt of your letter requesting a legal opinion of this department, which request reads as follows:

"Find enclosed herewith a certified copy of the transcript of proceedings for a Hospital Bond Issue in the year of 1946 for \$350,000.00. In that year it was voted to levy a two mill tax for a period of twenty years and that County bonds should be issued in the maximum amount of \$350,000.00 to provide funds for the purchase of a site and the erection thereon of a hospital and for the support and maintenance of same.

"Since that time the assessed valuation of tangible property in Dunklin County has been raised and the two mill tax brings in more than enough to take care of the bonds and interest.

"The County Court of Dunklin County wants to know:

What the excess can be used for?

Should the entire amount collected from that tax be put into a sinking fund to retire the Bond Issue?

May the excess be held and used for maintenance after the hospital has been erected?

Can the excess be used now for building and equipping the hospital?

These further questions occurred to the Court:

Is it proper for money collected from taxes to retire the Bond Issue to be commingled with money received from the sale of bonds; or should a separate account be set up for the sinking fund to retire the bonds and all money collected from the two mill tax be placed in that sinking fund and be used only to retire the Bond Issue and pay interest on the bonds?

"You will note that the proposition to levy this tax and to issue bonds was submitted under the authority of Article 4, Chapter 126, R. S. Mo. 1939.

"Since there is a disagreement between the Hospital Board and the County Court as to how this money should be handled we would appreciate it very much if your office could render it's opinion on the questions asked at an early date."

From the facts stated in your letter it appears that the proceedings instituted for the establishment and maintenance of a public hospital in your county were begun under the provisions of Article 4, Chapter 129, R. S. Mo. 1939. Sections 15192 to 15197, inclusive, of this chapter were repealed by the Legislature in 1945 and four new sections were enacted in lieu thereof and given the same section numbers as those of the old law.

Section 15192, Laws of 1945, page 984, reads as follows:

"The county courts of the several counties of this state are hereby authorized, as provided in this Article, to establish, construct, equip, improve, extend, repair and maintain public hospitals, and may issue bonds therefor as authorized by

the general law governing the incurring of indebtedness by counties. Provided that in all cases where proceedings for the issuance of county bonds have been initiated to the extent that petitions required by existing law have been circulated and filed with the county court containing the signatures of the requisite number of qualified petitioners and an order by the county court has been made pursuant thereto calling an election and fixing the date thereof under any statute repealed hereby, such election shall be held and the results thereof canvassed and certified pursuant to the statutes under which such proceedings were initiated, and if two-thirds of the qualified voters of the county voting thereon at such election shall vote in favor of incurring such indebtedness and of issuing bonds therefor, such bonds may be issued, sold and delivered under the provisions of the statute pursuant to which such proceedings were initiated, and such proceedings and such bonds, so issued, shall be valid; or where the issuance of such bonds has been authorized at an election held prior to the effective date of this act, such bonds may be issued, sold and delivered under the provisions of the statute pursuant to which such proceedings were initiated."

Under the provisions of this section the proceedings as to the issuing, selling and delivery of the Dunklin County hospital bonds were governed by the law pertaining to such matters at the time the proceedings were instituted, which were those of the 1939 statutes. In all other matters the provisions of the present laws pertaining to county hospitals and their operation will govern and are applicable to the facts before us.

Section 15193, R. S. Mo. 1939, the law in effect at the time the election was held reads as follows:

"The county court shall submit to the qualified electors of the county, at a regular or special election, the question whether there shall be levied upon the assessed property of such county a tax of _____ mills on the dollar for the purchase of real estate for hospital purposes and for the construction of hospital buildings, and for the maintenance of same, or for either or all of such purposes. The ballots to be used at any election at which the hospital question is submitted, shall be printed with a statement substantially as follows: If a two-thirds majority of the votes cast at such election on the proposition so submitted shall be in favor of a _____ mill tax for such bond issue for a public hospital and the maintenance of same, the county court shall levy the tax so authorized, which shall be collected in the same manner as other taxes are collected and credited to the 'hospital fund' and shall be paid out on the order of the hospital trustees for the purposes authorized by this article and for no other purposes whatever."

It appears that the proposition submitted to the voters was for a two mill tax for a bond issue for a public hospital which was carried by more than a two-thirds majority of those voting in the special election and was the authority under which the county court issued bonds in the sum of \$350,000. The provisions of section 15193 of the 1939 statutes required the proceeds of the collection of the tax to be placed to the credit of the hospital fund.

Under the provisions of Section 15193, Laws of 1945, the county court has the power to appoint five hospital trustees who shall hold their offices until the next following general election when their successors shall be chosen by the voters for terms of office of various lengths, as set out by the statutes.

Section 15194, Laws of 1945, among other things provides for organization of the Board of Trustees, and that the county treasurer of the county where the hospital is located shall be the treasurer of the hospital Board. The exclusive control of all money in the hospital fund is vested in the Board, including that of the purchase of site or sites, the purchase or construction of any hospital buildings, the care, custody and general supervisory control over the hospital, grounds and equipment.

While the statute provides that all money received for a county hospital shall be deposited in the county treasury to the credit of the hospital fund we are of the opinion that other laws relating to the incurring of county indebtedness, the issuing of bonds, and the method of paying off that indebtedness are applicable to a county indebtedness incurred by the issuance of bonds to build a public hospital.

Section 12, Article 10 of the Constitution of 1875, relating to the bonded indebtedness of counties and various other political subdivisions of the state provides in part as follows:

"* * * That any county, city, town, township, school district or other political corporation or subdivision of the State, incurring any indebtedness requiring the assent of the voters as aforesaid, shall before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same: * * *"

Section 3298, Laws of 1945, p. 600, relating to an annual tax and providing for a sinking fund to retire the bonded indebtedness of a county reads as follows:

"* * * The county court shall provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to create a sinking fund for the payment of the principal thereof within twenty years from the date of contracting the same."

In the case of State ex rel. v. Hackmann, 275 Missouri, 1. c. 543, the Supreme Court in its opinion held that the provisions of Section 10, Article 12 of the Constitution of 1875, supra, was applicable to the county hospital statutes:

"* * * There is no room for doubt in the present case, that the Legislature, in the exercise of the power devolved upon it under Section 12 of Article 10 of the Constitution, would have enacted a law for incurring an indebtedness to carry out its design of enabling counties of the State to build and maintain public hospitals, irrespective as to the sufficiency of two mills

on the dollar to furnish sufficient revenue for the indebtedness thereby incurred. And it would necessarily thwart this purpose on the part of the law-making body to hold, as insisted by respondent, that the act in question would not have been framed except for the purpose of limiting the rate of taxation to the amount therein prescribed."

In view of the foregoing it is our thought that a sinking fund to retire county hospital bonds is not only proper, but is fully authorized by the law. That a sinking fund to provide for the payment of the principal and interest on the Dunklin County hospital bonds should be set up and used for that purpose only, and that such funds should be kept separate and apart from all other accounts of the county.

Referring to the questions in the opinion request, we do not believe that the entire amount of funds realized from the annual collection of the two mill tax should be placed in the sinking fund but that it will only be necessary to place a sufficient amount of money in the sinking fund to retire the principal and interest payments on the bonds as they become due. After the deposit of such an amount in the sinking fund, it is our further thought that an unexpended balance of funds on hand whether it might have been derived from the two mill tax or the proceeds from the sale of the bonds should be deposited in the county treasury to the credit of the hospital fund. In the discretion of the hospital board the hospital fund may be used to defray the expense of erecting and equipping the hospital or to maintain the hospital after its completion. Such fund may be used for this or any other purpose for which the fund was authorized.

CONCLUSION

It is therefore the opinion of this department that constitutional and statutory provisions noted above relating to the incurring of indebtedness of a county by the issuing of bonds are fully applicable to county hospitals and that under said authority the county court has power to set up a sinking fund with which to pay the principal and interest on certain county hospital bonds of Dunklin County, Missouri. That said

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fund shall be used only for this purpose and shall be kept separate and apart from all other accounts of the county. From such tax as collected there should be deposited in the sinking fund the amount determined to be sufficient, out of such collections, to meet the payment of principal and interest on said bonds. Any remaining funds from such tax may be deposited in the county treasury to the credit of the "county hospital fund" and within the discretion of the hospital board may be used for any purpose for which the hospital fund has been authorized and no other.

Respectfully submitted,

PAUL N. CHITWOOD,
Assistant Attorney General

PNC:rm

APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL

