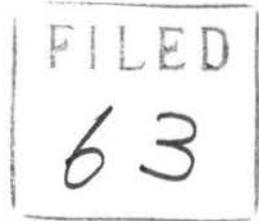


COUNTY HOSPITALS: Interest and sinking fund of county hospital bond issue to be kept in separate account, and all taxes
BONDS: collected therefor to be placed in this account.

December 12, 1949



Honorable Tom B. Mobley
Prosecuting Attorney
Kennett, Missouri

Dear Sir:

Your recent request for an opinion from this department reads as follows:

"Find enclosed herewith a certified copy of the transcript of proceedings in the issuance of Dunklin County Public Hospital bonds in the amount of \$200,000.00 in the year of 1949.

"This \$200,000.00 Bond Issue was voted to authorize the incurring of additional indebtedness and the issuance of additional bonds of Dunklin County in the principal amount of \$200,000.00 under the provisions of House Committee Substitute for House Bill 756 of the 63rd General Assembly approved April 10, 1946 (Laws of Missouri 1945, Page 983) to provide additional funds with which to establish, construct and equip a public hospital in said county.

"The following questions occurred to the County Court and there is a disagreement between them and the Hospital Board as to them.

"Should a separate account be maintained for the sinking fund for this particular Bond Issue and should all taxes collected for it be placed in this separate account.

"Should a separate account for the sinking fund for this 1949 Bond Issue be maintained and should it be kept separate and apart from the account for the sinking fund for the 1946 Bond Issue.

"You will note that I have separated the questions of these two Bond Issues with the hope of presenting the problems more clearly to you."

It was learned from additional sources that the 1946 bond issue mentioned above was effected following the voting upon and adoption of a proposition "for a (two) 2 mill tax for a bond issue for the public hospital and for maintenance of same." This was provided for by Section 15193, R.S. Mo. 1939, which was the applicable statute in force at that time, but which has since been repealed. After the adoption of this proposition, there were issued bonds in the principal amount and sum of \$350,000.00. Additional funds evidently were required, and the 1949 bond issue in the amount of \$200,000.00 was voted upon, authorized, and issued.

Section 15192, Laws of Missouri 1945, page 983, which authorizes the county court to establish and maintain a public hospital, reads in part 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. * * * * *

An Act approved April 5, 1946, Laws of Missouri 1945, page 597, is the general law governing the incurring of indebtedness by counties, and it was under this Act that the 1949 bonds were authorized and issued.

Section 26(f) of Article VI, Constitution of Missouri 1945, reads as follows:

"Before incurring any indebtedness every county, city, incorporated town or village, school district, or other political corporation or subdivision of the state shall provide for the collection of an annual tax on all taxable tangible property therein sufficient to pay the interest and principal of the indebtedness as they fall due, and to retire the same within twenty years from the date contracted."

This constitutional provision has also been enacted into statute. Section 3294, Laws of Missouri 1945, page 598, reads substantially the same. It was therefore necessary that an annual tax be provided for the interest and sinking fund before the 1949 bonds were issued. It is assumed that such has been done.

Section 1, of an Act approved March 7, 1946, Laws of Missouri 1945, page 1389, which is the general law relating to the proceeds and the interest and sinking funds of bonds issued by counties reads:

"When any bonds shall have been issued by any county, city, incorporated town or village, school district, or other political corporation or subdivision of the state, as provided under the constitution and laws of this State for the incurring of indebtedness or for refunding, extending, and unifying the whole or any part of their valid bonded indebtedness, the proceeds from the sale, thereof and all moneys derived by tax levy, or otherwise, for interest and sinking fund provided for the payment of such bonds, shall be kept separate and apart from all other funds of such governmental unit, so that there shall be no commingling of such funds with any other funds of such county, city, incorporated town or village, school district, or other political corporation or subdivision of the State: Provided, that in no case shall the proceeds derived from the sale of any such bonds be used for any purpose other than that for which such bonds were issued, nor shall such interest and sinking fund be used for any purpose other than to meet the interest and principal of such bonds: Provided further, that any bonds or money remaining in the interest and sinking fund of any such county, city, incorporated town or village, school district, or other political corporation or subdivision of the State, after the extinction of the indebtedness for which such bonds were issued, shall be paid into the general revenue fund of such county, city, incorporated town or village, or other political corporation or subdivision, and into the building fund of such school district."

It is therefore specifically provided that all moneys derived by tax levy for the payment of indebtedness incurred by a bond issue be kept in a separate fund and that such fund be kept separate and apart from all other county funds. Therefore, a separate account must be maintained for the interest and sinking fund for the 1949 bond issue, and all taxes collected for this fund must be placed in this account.

The 1946 and 1949 bonds were issued for substantially the same purpose, the establishment of a county hospital, which fact probably gives rise to your second question. Since the proceeds of the two bond issues are to be used for substantially the same purpose, it might be thought that there should be, or could be, a single interest and sinking fund for the two issues.

No authority can be found which provides that there be one interest and sinking fund to extinguish the indebtedness of two bond issues, even though they might be for the same purpose. We feel that as regards to the interest and sinking fund of the 1949 bond issue, the fact that the purpose for which the bonds were issued is substantially the same as that of the 1946 bond issue is immaterial. The proposition which was voted upon, approved, and which authorized the 1949 issue was separate and distinct from that authorizing the 1946 issue. The tax, the proceeds of which constitute the interest and sinking fund for the 1949 issue, was also separately provided for. It is therefore our opinion that, as provided by Section 1, Laws of Missouri 1945, page 1389, quoted above, the interest and sinking fund for the 1949 issue should be kept separate and apart from all other funds, including the interest and sinking fund for the 1946 issue, even though the purpose of the latter issue might be substantially the same as that of the 1949 issue.

CONCLUSION

It is therefore, the opinion of this department that the interest and sinking fund created to retire the indebtedness incurred as a result of the Dunklin County Public Hospital

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Bond issue of the year 1949 must be maintained in a separate account, and that all taxes collected for this interest and sinking fund must be placed in this separate account. This interest and sinking fund should be kept separate and apart from that of the 1946 bond issue, even though the purpose of the 1946 bond issue was also for the establishment of a county public hospital.

Respectfully submitted,

RICHARD H. VOSS
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General