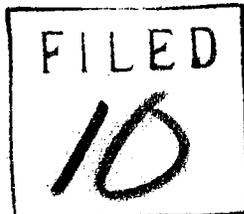


MUNICIPAL CORPORATIONS:

(1) Bonds voted for sewer ~~system~~ ^{may} not be converted for use on water system; (2) city could not become indebted for 20% of its valuation for such purpose and also 10% of its valuation for water system.

BONDS:

JOHN M. DALTON
XXXXXXXXXX



April 29, 1953

John C. Johnsen
XXXXXXXXXX

Honorable Allen Bowsher
Missouri Senate
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"I would appreciate an opinion on these two matters that have come up in my district. I would appreciate an early reply.

"1. Can bonds, previously voted for a sewer system, be converted for use on a water system if the people vote to convert and if the bond holders agree?

"2. Can a city be bonded for 20% of its valuation for a sewer system and simultaneously be bonded for 10% of its valuation for a water system?"

Sections 26(b), 26(c) and 26(d) of Article VI of the Constitution of Missouri, 1945, authorize municipalities to become indebted upon the vote of the inhabitants. Sections 95.115 to 95.160, RSMo 1949, provide the statutory method for the incurring of indebtedness under these constitutional provisions. The construction of a sewer system is a purpose for which indebtedness may be so incurred under Section 26(d) of Article VI. See also Section 250.040, RSMo 1949, Laws of Missouri, 1951, p. 638, 640.

Examination of the statutes reveals no provision authorizing the submission to a vote of the inhabitants a proposition

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to divert funds previously acquired through a bond issue for one purpose to another purpose. "When the Legislature has expressly provided a method or methods by which a power conferred upon a municipality shall be exercised, the municipality has no implied power to exercise it in another manner." State ex rel. City of Blue Springs v. McWilliams, 335 Mo. 816, 74 S.W. (2d) 363, 1.c. 367.

The Legislature has provided for the incurring of indebtedness, but having made no provision for the diversion of funds acquired under such procedure, we perceive no authority under which an election might now be held which would enable the city to use the funds voted for the sewer system for a water system. "No election can be had unless provided for by law." State ex rel. McHenry v. Jenkins, 43 Mo. 261, 1.c. 265.

We find no case in which the courts of this state have passed upon the authority of a city to divert funds in a situation and in the manner such as here presented. However, the courts have indicated that such diversion is not to be permitted. In the case of Thompson v. City of St. Louis (Mo. Sup.), 253 S.W. 969, 1.c. 972, the Supreme Court, in discussing a bond issue of the city of St. Louis, stated: "Through the receipt of the proceeds of the bonds the city incurred certain obligations, to be sure, but they were essentially those that rest upon the custodian of a trust fund. It was bound to see that the fund was applied to the purposes for which it was created and no other, and that in general was the extent of its obligation in the premises." (Emphasis ours.)

In the case of Stephens v. Bragg City, 224 Mo. App. 469, 27 S.W. (2d) 1063, 1.c. 1064, the court stated:

" * * * This money did not belong to the general revenue fund of the city. It was the product of bonds voted by the people of the city to secure money for a specific purpose, and when the bonds were issued and sold the money received thereby could not legally be used by the city for any other purpose. * * *" (Emphasis ours.)

In our consideration of your first question we have assumed that the bond issue originally approved was expressly for the purpose of construction of a sewer system, and that the city in

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question had not taken advantage of Sections 250.020 and 250.030, RSMo 1949 (Laws of Mo. 1951, p. 638), and that there was nothing in the proposal which might have indicated that the proceeds were to be used for a combined water and sewer system.

As for your second inquiry, Section 26(b) of Article VI of the Constitution of Missouri, 1945, as amended, provides:

"Any county, city, incorporated town or village or other political corporation or subdivision of the state, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted in an amount not to exceed five per centum of the value of taxable tangible property therein as shown by the last completed assessment for state or county purposes, except that a school district by a vote of two-thirds of the qualified electors voting thereon may become indebted in an amount not to exceed ten per centum of the value of such taxable tangible property."

Section 26(c) of Article VI of the Constitution of Missouri, 1945, provides:

"Any county or city, by vote of two-thirds of the qualified electors thereof voting thereon, may incur an additional indebtedness for county or city purposes not to exceed five per centum of the taxable tangible property shown as provided in section 26(b)."

Section 26(d) of Article VI of the Constitution of Missouri, 1945, provides:

"Any city, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted not exceeding in the aggregate an additional ten per centum of the value of the taxable tangible property shown as provided in section 26(b), for the purpose of acquiring rights of way, constructing, extending and improving the streets

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and avenues and acquiring rights of way, constructing, extending and improving sanitary or storm sewer systems. The governing body of the city may provide that any portion or all of the cost of any such improvement be levied and assessed by the governing body on property benefited by such improvement, and the city shall collect any special assessments so levied and shall use the same to reimburse the city for the amount paid or to be paid by it on the bonds of the city issued for such improvement."

Section 26(e) of Article VI of the Constitution of Missouri, 1945, provides:

"Any city, by vote of two-thirds of the qualified electors thereof voting thereon, may incur an indebtedness in an amount not to exceed an additional ten per centum of the value of the taxable tangible property shown as provided in section 26(b), for the purpose of paying all or any part of the cost of purchasing or constructing waterworks, electric or other light plants to be owned exclusively by the city, provided the total general obligation indebtedness of the city shall not exceed twenty per centum of the assessed valuation."

Inasmuch as you refer to incurring indebtedness of a percentage of assessed valuation, we assume for the purpose of this opinion that you refer to general obligation bonds, not revenue bonds, to which limitations on indebtedness prescribed by the Constitution are not applicable. Section 27, Article VI, Constitution of Missouri, 1945; City of Maryville v. Cushman, 249 S.W. (2d) 347.

Section 26(e) of Article VI of the Constitution limits the power of a city to incur an additional indebtedness for water and light plants to situations in which the total general obligation indebtedness of the city does not exceed twenty per cent of the assessed valuation. No such express limitation is found in Section 26(e) of Article VI authorizing a city to incur additional indebtedness for sewer purposes. However, these sections

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are in pari materia and should be construed together, if possible, to ascertain the intention of the framers of the Constitution. State ex rel. City of Columbia v. Wilder, 197 Mo. 1, l.c. 7, 94 S.W. 495.

Considered together, we feel that the framers of the Constitution intended to impose a twenty per cent limitation upon the general indebtedness which a city might incur. Obviously, under Section 26(e), if a city had already incurred general obligation indebtedness in the amount of twenty per cent for sewer purposes, it could not further obligate itself by general obligation indebtedness under Section 26(e) for lights or water works because of the express limitation found in that section. Since the obligation could not be incurred in such circumstances, we feel that the framers of the Constitution did not intend to permit, under Section 26(d), the incurring of an additional ten per cent indebtedness above the twenty per cent limitation which the city might have incurred under Section 26(e), but rather intended that, in any event, the limitation should be twenty per cent.

Examination of the Debates of the Constitutional Convention of 1945 bears out this construction. The provisions of Section 26 of Article VI, exclusive of what is now Section 26(e), were considered at one time. Transcript of Debates, pages 3085-3104. Subsequently, what is now Section 26(e) was introduced and considered separately. In introducing what is now Section 26(e), Mr. Bradshaw stated (Transcript of Debates, page 4086):

"Now the purpose of this section is not to increase the indebtedness that might be permitted by a city, but rather to give a greater degree of flexibility to that indebtedness. In the Constitution at the present time there is in Section 12a, a similar provision applying to a few more utilities which applies to cities of less than 30,000. In Section 12 there was such a provision for some of the larger cities. Now, in previous Section 13 we authorized a general obligation indebtedness of as much as twenty percent for cities. Ten percent of that was specifically for the purpose of public improvements of street and sewer systems. That leaves a ten percent which could be available for other municipal purposes.

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"Now, it has been called to our attention by some of the people interested in the smaller cities, that the particular provision be adopted, whereas it increased the total by five percent and actually reduced the possible total for this purpose by five percent because the present Constitution, in Section 12a, allowed ten percent for a number of such purposes in addition to the five percent that was generally available for cities. The purpose of putting the section in, if it is put in, would be that it does not change the maximum which we have already approved, that could be incurred for general obligation purposes, but it would give a greater degree of flexibility where some smaller cities particularly interested in water works, something of that kind that might not wish to, might wish to be issued more obligation bonds, than permitted by the ten percent; in other words, we have reduced those by five percent in the setup for general obligation bonds at this time, but in order not to create an additional debt power for them, we put the proviso, 'provided the total should not exceed that which the Convention has already authorized.' Therefore, merely authorizes a greater degree of flexibility within the indebtedness which has already been approved by the Convention."

(Emphasis ours.)

CONCLUSION

Therefore, it is the opinion of this department that the proceeds of bonds previously voted by a municipality for a sewer system may not be diverted for use for a water system, and that a city may not incur a general obligation indebtedness in excess of twenty per cent of its valuation, and that it could not therefore incur a general obligation indebtedness for twenty per cent of its assessed valuation for a sewer system and simultaneously a general obligation indebtedness for ten per cent of its valuation for a water system.

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The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

RRW:ml