

COUNTY COURTS: A county court may agree at a stated consideration  
BONDS: the cancellation of outstanding bonds prior to maturity date, where such agreement will result in substantial savings to the county in the nature of a waiver of future interest payments.



April 30, 1954

Honorable Weldon W. Moore  
Prosecuting Attorney  
Houston, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office which request reads as follows:

"In 1940 Texas County, a County of the third class voted a \$50,000.00 funding bond to pay County Revenue Warrants. The bonds were for 20 years with interest at the rate of  $3\frac{1}{2}\%$ . There is a balance of \$21,000.00 owing on these bonds and the County is in position to pay this amount and the County Court desires to pay the balance. It is believed the bond purchasers will accept payment if the county will pay interest for the year of 1954, which is not yet due.

"The County Court desires to know whether or not they may pay the interest for 1954 when it is not owed and the interest payment is met solely for the purpose of inducing the bond holders to accept payment for the bonds.

"If this action is permissible the County can save approximately \$5,000.00 on interest payments."

A bond is essentially a contract between two persons (here the county and the bondholders) for the payment of money in a specified time and usually at a stated rate of interest. While bonds such as here considered could have contained a provision for recall at the option of the county prior to maturity we assume that said bonds did not so provide. Such being the case the bondholders could under contract insist upon the payment of principal and interest as per the terms of the contract and the county would be obligated to comply. However, as stated since the bond is a matter of contract the parties may agree to a different method of discharging the

Hon. Weldon W. Moore

obligation or cancellation thereof. While you have indicated that the bondholders would agree to a cancellation of the bonds upon payment of the principal remaining and interest for the year 1954, we do not believe that such would be the legal effect. There would be no authority for the payment of interest which has not yet accrued. The payment to the bondholders of an amount equal to the amount of interest which would ultimately become due for the year 1954 should, we believe, be treated as the consideration for an agreement to cancel the bonds upon payment of the principal remaining.

It is our opinion that the county court may enter into such a contract for the discharge of such obligation. Section 49.270, RSMo. 1949, among other things, vests the county court with the control and management of property belonging to the county and the authority to audit and settle all demands against the county.

The county court has the authority to issue bonds (Chapter 108, RSMo. 1949) and to enter into contract on behalf of the county. *Aslin vs. Stoddard County*, 106 S.W. 2d. 472.

County courts are the fiscal agents of the county (State ex rel. *Walther vs. Johnson*, 173 S.W. 2d. 411) and have such implied powers as are necessary to carry out powers expressly granted. (*King v. Maries County*, 249 S.W. 418.) With these authorities in mind it is our opinion that the county court may agree at a stated consideration for the cancellation of outstanding bonds prior to maturity date where there are sufficient funds available for such purpose and where such action would result in a substantial saving to the county by waiver of further interest payments. Such action is in complete accord with good business practices and is to be recommended.

#### CONCLUSION

Therefore, it is the opinion of this office that a county court may agree at a stated consideration for the cancellation of outstanding bonds prior to maturity date, where such agreement will result in substantial savings to the county in the nature of a waiver of future interest payments.

This opinion, which I hereby approve, was written by my assistant, Mr. Donal D. Guffey.

Yours very truly,

DDG:mw

JOHN M. DALTON  
Attorney General