

MISSOURI TURNPIKE AUTHORITY:

Senate Bill #206 would not impose any obligation upon the state for Turnpike Authority debts.



February 9, 1955

Honorable William M. Quinn
Missouri State Senate
Jefferson City, Missouri

Dear Senator Quinn:

We have received your request for an opinion of this office which request reads as follows:

"Senate Bill No. 206, introduced in the 68th General Assembly, provides for the establishment of a Missouri Turnpike Authority. By Section 4 of said bill the Authority consists of the members of the Missouri State Highway Commission, together with the Governor and State Geologist as ex officio nonvoting members.

"The bill provides for the issuance by the Authority of revenue bonds for the financing of toll road projects. I would like your opinion as to whether or not under said bill the Missouri Turnpike Authority would have the power to obligate in any manner the State of Missouri or any political subdivision or the Missouri State Highway Commission or Department for payment of the bonds issued by the Missouri Turnpike Authority or of any other obligations which might be incurred by the Missouri Turnpike Authority."

Senate Bill No. 206 of the 68th General Assembly would create a Missouri Turnpike Authority authorized to construct and maintain turnpike projects in the State of Missouri. By Section 4 of the Bill the authority consists of the members of the State Highway Commission together with the Governor and State Geologist as members, ex officio. Bearing on the question presented by you are the following provisions found in the Bill.

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Section 8(6) provides as follows:

"To issue turnpike revenue bonds of the authority, payable solely from revenues or other funds pledged for their payment as herein provided, for the purpose of paying all or any part of the cost of any one or more turnpike projects;"

Section 18 provides, in part, as follows:

"The authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of turnpike revenue bonds of the authority for the purpose of paying all or any part of the cost of any one or more turnpike projects. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment.
* * * * *"(Emphasis ours.)

Section 21 provides:

"Turnpike revenue bonds issued under the provisions of this act shall not be deemed to constitute a liability or debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any such political subdivision but such bonds shall be payable solely from the funds pledged for their payment as authorized herein, unless such bonds are refunded by refunding bonds issued under the provisions of this act, which refunding bonds shall be payable solely from funds pledged for their payment as authorized herein. All such turnpike revenue bonds shall contain on the face thereof a statement to the effect that the bonds, as to both principal and interest, are not an obligation or liability of the state of Missouri, or of any political subdivision thereof, but are payable solely from the revenues and funds pledged for their payment."

Section 22 provides:

"All obligations incurred in carrying out the

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provisions of this act shall be payable solely from funds provided under the authority of this act and nothing in this act contained shall be construed to authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any political division thereof."

Section 34 provides, in part:

"The authority is hereby authorized to provide by resolution for the issuance of turnpike revenue refunding bonds of the authority payable solely from revenues for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this act, * * *"

The above quoted provisions make it quite clear that the Bill proposes to finance the operation of the Missouri Turnpike Authority by revenue bonds payable solely from the tolls of turnpikes constructed by the Authority. The Bill expressly provides that the state, or none of its political subdivisions shall, in no event, be liable for the principal or interest on said bonds.

The courts of numerous states have recognized the validity of so-called revenue bonds and have particularly pointed out that as a feature of said bonds no liability is imposed upon the state or other political subdivision for the principal or interest on said bonds. The holders thereof are required to look solely to the income of the projects financed for the payment of said bonds.

Thus, in the case of Ziegler v. Witherspoon, 331 Mich. 337, 49 N.W. 2d. 318, 1.c. 325, the court stated:

"Revenue bonds are issued to raise funds to purchase or construct utilities or other public structures, and are payable only from the revenues received from the operation of the utilities or structures. The credit of the state is not pledged for their payment.
* * * *" (Emphasis ours.)

In the case of California Toll Bridge Authority vs. Wentworth, 212 Calif. 298, 298 P. 485, 1.c. 486, the court stated:

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"* * *The overwhelming weight of judicial opinion in this country is to the effect that bonds, or other forms of obligation issued by states, cities, counties, political subdivisions, or public agencies by legislative sanction and authority, if such particular bonds or obligations are secured by and payable only from the revenues to be realized from a particular utility or property, acquired with the proceeds of the bonds or obligations do not constitute debts of the particular state, political subdivision, or public agency issuing them, within the definition of 'debts' as used in the constitutional provisions of the states having limitations as to the incurring indebtedness. * * *"

In the case of State Bridge Commission vs. H. J. Nease Co. 153 S.E. 305, l.c. 306, the Supreme Court of Appeals of West Virginia in discussing revenue bonds stated, l.c. 487:

"* * *Are these bonds a debt of the state within the meaning of said section 4, above quoted? The act expressly says in section 12 thereof that nothing therein shall be construed or interpreted to authorize the incurring of a state debt of any kind or nature. The payment of the bonds is to be made exclusively from the revenues derived from the bridges. No other revenues are applicable. Taxation for their redemption in any form cannot be imposed. The state cannot be compelled to pay them. The act itself is a part of the bonds as if written therein in extenso. The purchasers of the bonds are bound by the act, and cannot look to the state for payment. * * * *" (Emphasis ours.)

Similar discussions are to be found in the cases of Alabama State Bridge Corporation vs. Smith, 217 Ala. 311, 116 So. 699; Estes vs. State Highway Commission, 235 Ky. 86, 29 S.W. 2d. 583.

Therefore, it is well settled that when an Authority, such as here proposed, issues bonds and such bonds are made payable solely from the revenues derived from the project thereby financed, such bonds do not constitute, and cannot become, an obligation of the state which created the Authority, or of any of its political subdivisions.

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As for the imposition of liability upon the State Highway Commission or State Highway Department, there is absolutely nothing in the Bill which could result in the State Highway Commission becoming liable on said bonds and causing the payment thereof to be made from the state road funds. Actually, the Bill quite clearly provides that any damage to the state highway system shall be reimbursed by the Authority solely out of the proceeds of the bonds issued by it. Such provisions are found in Sections 10 and 11.

Section 35 of the Bill does authorize the State Highway Commission eventually to take over any turnpike constructed by the Authority but, it may do so only after the project has been paid for or a sufficient amount of money has been received from the tolls and set aside for the benefit of bondholders to pay any balance remaining unpaid. It may also be noted that under this section such turnpikes may be taken over by the Highway Commission "if then in good condition and repair to the satisfaction of the State Highway Commission."

Section 36 of the Bill does authorize the State Highway Commission, prior to the receipt of funds from the sale of bonds by the Authority, to agree with the Authority for the employment of Highway Commission personnel in the original stages of the project, however, this section expressly provides for the reimbursement by the Authority of the Commission for any funds expended by the Commission in connection with the projects.

CONCLUSION

Therefore, it is the opinion of this office that as Senate Bill No. 206 now stands the issuance of bonds for the financing of turnpike projects by the Missouri Turnpike Authority and the operation of turnpikes by said Authority would not in any manner obligate the State of Missouri, or any political subdivisions thereof, or the Missouri State Highway Commission, or Department, for the payment of the bonds issued by the Missouri Turnpike Authority, or any other obligations which might be incurred by said Authority.

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

Yours very truly,

JOHN M. DALTON
Attorney General

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