

MUNICIPALITY:
BONDS:
SECRETARY OF STATE:

Bonds issued by municipalities of Alabama under Act of General Assembly of Alabama, 1956, not subject to registration in this state under Section 409.040, RSMo 1949.



July 11, 1956

Mr. Jos. W. Mosby
Commissioner of Securities
Office Secretary of State
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion inquiring if under Section 409.040, Subsection 1, MoRS 1949, such bonds as issued by the City of Florence, Alabama, 5% mortgage industrial development bonds, a copy of which is attached to your request, are exempt from registration in this state.

Your request reads:

"Enclosed please find Prospectus and copy of 5% First Mortgage Industrial Development Revenue Bonds issued by the City of Florence, Alabama. Enclosed, also please find copy of letter addressed to the undersigned from Mr. Charles H. Luecking of St. Louis, Missouri. These enclosures are in regard to a certain security registration now pending in the Securities Department of the Office of Secretary of State. It is the contention of Mr. Luecking as attorney for the security registrant, that the First Mortgage Bonds of Florence, Alabama are exempt from registration under the Missouri Securities Law. In support of this contention, Mr. Luecking has cited subsection (1) of Section 409.040, R.S. Mo., 1949.

"The First Mortgage Bonds in question are being issued by the City of Florence, Alabama in connection with Common Shares of Stock being issued by the Sheraton Florence Corporation, a Delaware corporation.

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"The purpose of the registration is to provide funds for the building of a hotel in Florence, Alabama. The City of Florence, Alabama will not, upon completion, own any part of the hotel. Ownership of the hotel will be in the Sheraton Florence Corporation, a Delaware business corporation. The Sheraton Corporation of America will operate the hotel. This latter corporation will also hold controlling stock in the Sheraton Florence Corporation. The bonds in question will be retired from profits made through the operation of this hotel. The City of Florence, Alabama does not guarantee payment of the bonds in any manner. These bonds are not general obligation bonds of the City of Florence, Alabama, nor has the City mortgaged any property to secure payment of these bonds. At the present time the interest and income from these bonds is exempt from Federal Income Tax.

"In view of the foregoing, your opinion is respectively requested upon the following proposition.

"1. Does the exemption provided for in sub-section (1), Section 409.040, R.S. Mo., 1949, include securities of this type issued by the City of Florence, Alabama?

"In view of the fact that securities of this type could not be issued by political sub-divisions of the State of Missouri, would the sale of such bonds be against the public policy of this State-hence prohibiting the sale of such securities in the State of Missouri?"

We assume that you question whether such revenue bonds are exempt under the foregoing statute for the reason the principle and interest on said bonds are not required to be paid from taxes received by said city, as the foregoing statute refers to the issuance of any security by any state of the United States or any political subdivision having the power of taxation and for the further reason that similar privileges as requested herein are not afforded municipalities of this state.

The particular statute to be construed is Section 409.040 MoRS 1949, which reads, in part:

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"Except as herein provided, the provisions of this chapter shall not apply to any security which is within any of the following classes of securities:

"(1) Any security issued by, or the principal and interest of which are guaranteed by, the United States or any territory or insular possession thereof, or by the District of Columbia, or by any person controlled or supervised by and acting as an instrumentality of the United States, pursuant to authority granted by the Congress of the United States; or by any state of the United States or any political subdivision having the power of taxation; or by any agency or any public instrumentality of one or more of the states or territories or of the political subdivisions thereof;"

In *Storrs vs. Heck*, 190 So. 78, 1.c. 84, 238 Ala. 196, the Supreme Court of Alabama held that cities are political subdivisions of the state. Therefore we must hold that the City of Florence, Alabama is a political subdivision within the meaning of Section 409.040, supra.

We assume, for the sake of this opinion, that Section 8, Act #4 of the General Assembly of Alabama, 1956, as quoted in counsel's letter attached to your request, is correct and reads:

"Section 8. The proceeds from the sale of any bonds issued under authority of this act shall be applied only for the purpose for which the bonds were issued; provided, however, that any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided further, that if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring any project shall be deemed to include the following: the actual cost of the construction of any part of a project which may be constructed, including architect's and engineer's fees; the purchase price of any part of a project that may be acquired by purchase, all expenses in connection with the authorization, sale and issuance

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of the bonds to finance such acquisition; and the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding six months after completion of construction.'"

Furthermore, for sake of this opinion, we assume said act contains no further condition or obligation upon the City of Florence with respect to said bonds.

The foregoing presumptions are mentioned for the reason that the Missouri Supreme Court's Law Library does not contain any copies of legislation of the State of Alabama for 1956.

The interest and principal on said bonds are to be paid from revenue received from the operation of the hotel to be constructed from the proceeds of the sale of said bonds. Apparently the sole interest of the City of Florence in issuing said bonds is to secure for said City a greater industrial development.

There are several rules of statutory construction to consider in construing the foregoing statute the first one is that exemption provisions in the law must be strictly construed against the exemption. Missouri Good Will Industries vs. Gruner, 210 S.W.(2d) 38, 357 Mo. 647.

As was stated in Midwest Bible and Missionary Inst. vs. Sestric, 260 S.W.(2d) 25, claims for exemption from taxation are not favored in the law and, therefore, taxation is the rule and exemption the exception. We believe the same rule generally applicable to any exemption under the laws.

A primary rule of statutory construction is to ascertain the lawmaker's intent from the words used if possible and to put on the language of the Legislature honestly and faithfully its plain and rational meaning and to promote its object and manifest purpose of the statute. Also where no technical language is employed therein the words will be construed in their ordinary sense and with meaning commonly attributed to them unless such construction will defeat the manifest intent of the Legislature. State ex inf. Rice ex rel. Allman vs. Hawk, 360 Mo. 490, 228 S.W.(2d) 785.

Considering the language used in Section 409.040, supra, in the light of the foregoing rules of construction, we believe that the legislative intent in enacting said statute was to exempt from registration such bonds, notwithstanding the fact that said bonds are merely issued by such municipality having the power of taxation but with no further financial obligation or liability on the part of

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said municipality. All that the statute specifically requires said municipality to do is issue said bond and that it have taxing power.

"Issue" has been defined in Websters New International Dictionary, Second Edition, as follows:

"* * *1. To cause to issue; to emit; discharge.
2. To deliver, or give out, as for use, or, to issue provisions. 3. To send out officially; to deliver by authority; to publish or utter; to emit; as to issue an order, or writ."

In *Hidalgo Co. Drainage District v. Davidson*, 120 S.W. 849, 851, 102 Tex. 539, the Court in construing an act of the Legislature creating a drainage district desiring to issue bonds in accordance with said act, defined issue to mean, to put bonds into circulation by selling them.

In *Folks v. Yost*, 54 Mo. App. 55, 59, the Court held that the ordinary and commonly accepted meaning of "to issue" is to send, forward, to put into circulation, to emit, as to issue bank notes, bonds, etc. See also *State ex rel. Arn v. Woodruff*, 189 P.(2d) 899, 904, 164 Kan. 339.

We think it will be conceded under the foregoing facts and law in this case that the City of Florence is authorized to issue said bonds. Relative to the latter requirement that said municipality have taxing power we believe was added merely as a matter of identity. In short, it wanted only such municipalities having that power to tax, to have the right to issue such bonds. It must be admitted that if the Legislature had intended that interest and principal on such bonds should be paid from the revenue derived from taxation, it could have included such a proviso in the statute.

You further inquire, in view of the fact that securities of this type cannot be issued by political subdivisions of this state, would the sale of such bonds be against the public policy of this state, hence prohibit the sale of same in Missouri.

There apparently is no well established or precise definition of public policy in this state. However, the Court in *Rahn's Estate*, 291 S.W. 120, 316 Mo. 492, 51 A.L.R. 877, 1.c. 883, held that no provision in a will should be held void as against public policy unless it contravenes some positive expression of the settled will of the people as found in the Constitution, statutes and judicial decisions. Said court also approvingly quoted from other Missouri cases, likewise holding that when speaking of public policy of the

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state it means the law of the state whether found in the Constitution, statutes or judicial records.

Furthermore, while it is rather unusual to find any Missouri statute granting privileges more beneficial or favorable to other states than Missouri, we are cognizant of no law that prevents the Legislature from enacting such legislation which, incidentally, is applicable to no one state in particular, but would include Missouri if it chooses to come under it.

We do have statutes and constitutional provisions for municipalities and other political subdivisions in this state issuing revenue bonds, the principal and interest of the bonds payable solely from the revenue derived from the operation of such projects constructed as a result of the issuance of said bonds. See Section 27, Article VI, Constitution of Missouri, providing that cities or incorporated towns or villages of this state may issue revenue bonds for construction of certain water, gas or electric light works, heating or power plants or airports to be owned exclusively by the municipality. Also under Chapter 176, MoRS, 1949, it is provided that revenue bonds may be issued by state educational institutions for various projects, however, the interest and principal shall be paid from the net income and revenue of said projects. The only difference being that in those instances just referred to hereinabove such construction is usually owned exclusively by the municipality.

In view of the foregoing, we believe that such bonds are exempt from registration under the present law and, furthermore, that the public policy of the state will not prohibit the sale of said bonds.

CONCLUSION

Therefore, it is the opinion of this department that such bonds issue is exempt under and by provision of Section 409.040, Subsection 1, MoRS 1949. Furthermore, that the sale of such securities cannot be prohibited simply because same could not be issued under the same facts and circumstances by a municipality or political subdivision of this state.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

ARH:mw

John M. Dalton
Attorney General