

COUNTY COURT: County hospital has been established when
COUNTY properly originated and the bond election
HOSPITALS: has carried; no authority to pay from
the general revenue of a county for an
advertising or publicity campaign preced-
ing bond election.



February 28, 1957

Honorable William E. Gladden
Prosecuting Attorney
Texas County
Houston, Missouri

Dear Mr. Gladden:

Your January 15 request for an official opinion from
this office was stated as follows:

"Section 205.200 provides for a
special tax levy for county hos-
pital maintenance.

"Question: Does the above mentioned
section give the County Court the au-
thority to levy such a tax after a
county hospital bond issue has been
passed, but before such a hospital
is built and in active operation?
There is some indication in our coun-
ty on the part of the county hospital
board to certify such a levy to the
County Court for the purpose of hir-
ing a skeleton staff and hospital
director before or while the county
hospital is being built.

"Section 205.230 provides for use of
funds out of the county general fund
for the improvement and maintenance
of a public hospital.

"Question: Does this section or any
other statutory section authorize the
County Court to use general funds to
pay the charges of a bonding company
in a hospital bond election, or must

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the charges of the bonding company for publicity, issuing bonds, etc., be taken out of the proceeds of the sale of the bonds?"

To assist us you enclosed a copy of an agreement between A. H. Bennett & Company and the county court of Texas County. Generally, that contract provided for A.H. Bennett & Company to make a financial study regarding the potential ability of the county to finance the hospital project, to retain attorneys, to furnish publicity, to print the bonds if the bond election carried, to pay the State Auditor's registration fee, and to prepare and distribute a prospectus to potential bidders, and it provided that the county would pay nothing to Bennett & Company if that company purchased the bonds but would pay ten dollars in the event the issue failed to carry and would pay two per cent of the par value of the bonds in the event the bond issue carried, but that Bennett & Company failed in its attempt to purchase. We return your copy of the agreement as requested.

The answer to your first question, we think, is definitely Yes. Section 205.200 states that the county court shall levy the special tax for hospital maintenance and improvement when the public hospital "shall have been established" as provided in Sections 205.160 to 205.340.

If the required petition, order of the court and other preliminary steps were properly followed and the issue carried, the hospital has been established within the meaning of the word "established" as used in this section.

In the case of the Appeal of Seagrave, 17 Atl. 412, (Pa.), and in a Vermont case, In re Pierpont's Will, 47 Atl. 780, the identical question as to when a hospital has been established was passed on. The courts in those cases, in effect, held that the word "established," as used in the wills in question, did not necessarily imply completed. They were established when sufficient steps had been taken to create, set up or settle firmly the plans for the hospital. Both Bouvier and Black define the word "establish" to mean to found, to create, to settle firmly, originate, prepare or to recognize.

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When sufficient steps have been taken to provide for the bond election and after the project has proceeded to the extent that the election has been held, it has been established sufficiently within the meaning of the word in 205.200 not only to authorize but to require the county court to levy the tax as required in that section. We proceed, too, upon the assumption that the county court has appointed the five trustees as required by 205.170.

Your second question is actually in three parts; that is, does Section 205.230 authorize the county court to use general funds to pay the charges claimed under the contract mentioned above. In our opinion it definitely does not. Section 205.230 is authorization for the county court to make a levy for the hospital "improvement and maintenance" in addition to that which is levied upon the trustees' certification. We understand that this fund, too, would be deposited to the hospital fund account. It can be used only for improvement and maintenance just the same as can the fund created from the special tax levy. It does not become part of the general revenue fund of the county, and does not purport to authorize anything from the general fund.

The second part of question number two is: Does any other statutory section authorize the County Court to use general funds to pay the fees contracted for. We know of no such authorization. In the first place, you do not state whether or not it was budgeted for; then, secondly, even if it had been included in the budget we do not think authority existed for the county to incur such charges. The county court (Article VI, Section 7, 1945 Constitution) "shall manage all county business as prescribed by law." We fail to find wherein such authority is so prescribed. A county court can bind the county only when acting strictly within statutory authorization. Persons dealing with county courts are bound to take notice of their powers and authority. See *Bayless v. Gibbs*, 158 S.W. 590, 251 Mo. 492.

The third part of question number two is: Does Section 205.230, or any other section, authorize the court to pay the charges arising under this contract from the

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proceeds of the sale of the bonds. We think very definitely the answer to this is No. Section 205.160 provides that the bonds "to establish, construct, equip, improve, extend, repair and maintain public hospitals" may be issued "as authorized by the general law governing the incurring of indebtedness by counties." Chapter 108 of the statutes governs bond issues generally. Note 108.110 and 108.180 provide that the money shall be used for the purposes for which the bonds were issued and none other.

Sections 108.310 to 108.350 provide a simple way to establish the validity of a bond issue. This can be brought by the county court's legal advisor - the prosecuting attorney. No section of the statutes that we can find empowers the county court to hire a firm of attorneys to render a "final approving legal opinion."

Section 205.160 clearly does not authorize the bonds to be issued for a "financial study," "attorneys' fees," "publicity," or a "prospectus" for the benefit of prospective purchasers.

There can be no question about the county's authority, and, furthermore, its obligation to pay the costs of the bond printing and auditor's registration fee. There is no authority, however, for a contract with another to act as its agent in paying such.

The result is, in our opinion, the contract hereto attached, is void.

CONCLUSION

From the foregoing, we conclude that the county court is not required to wait until a hospital building is completed or until a hospital is in active operation before levying the tax as required in Section 205.200. We further conclude that the recording fees and printing costs for bonds should be paid by the county out of the proceeds from the sale of the bonds, but not through an agent; that neither the proceeds from the sale of bonds nor the general funds of the county may be used for financial study, attorneys' fees, pub-

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licity, or a prospectus incurred during a campaign for a hospital bond election, nor does the county court have authority to contract with anyone to pay them for the county.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Russell S. Noblet.

Very truly yours,

John M. Dalton
Attorney General

RSN:lc

1 enclosure