

NURSING HOMES: A county is authorized to issue bonds and purchase  
BONDS: a nursing home owned and operated by townships  
TOWNSHIPS: within the county. The county may issue bonds for  
COUNTIES: the construction and equipment of additions to the  
nursing home. The townships have authority to  
sell the nursing home. The townships are obligated  
to pay the bonds issued by the townships for the  
original purchase and construction of the nursing  
home.

OPINION NO. 11

May 29, 1963



Honorable J. W. Colley  
Prosecuting Attorney  
Dade County  
Greenfield, Missouri

Dear Mr. Colley:

Your request for an official opinion reads:

"The County Court of Dade County has asked me to write you for an opinion on the following proposition:

"Dade County is a Township organization and about 2 years ago the townships of Lockwood and Smith voted a \$50,000.00 bond issue and erected the Good Shepherd Rest Home. They were assisted financially by John C. Maybee and the Hill - Burton Fund.

"They now have a plan to enlarge the building and apparently the John C. Maybee Foundation of Tulsa, Oklahoma, is now willing to assist in the expense of the addition to the building. The Hill - Burton fund is also willing to assist in this construction.

"The County Court wishes to know if county wide bonds can be voted and the money used, first - to pay the present bonds owed by Smith and Lockwood Townships and second - to pay for the construction of the additional space as needed.

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"When the Good Shepherd Rest Home was established and the bonds voted only two townships in Dade County participated. This was done under Sec. 205.375 which was amended so that the townships could legally operate a rest home."

In your opinion request, you refer to Section 205.375, RSMo, and we quote a portion of that section as follows:

"2. The county court of any county or the township board of any township may acquire land to be used as sites for, construct and equip nursing homes and may contract for materials, supplies, and services necessary to carry out such purposes.

"3. For the purpose of providing funds for the construction and equipment of nursing homes the county courts or township boards may issue bonds as authorized by the general law governing the incurring of indebtedness by counties, or may provide for the issuance and payment of revenue bonds in the manner provided by and in all respects subject to chapter 176, RSMo, which provides for the issuance of revenue bonds of state educational institutions."

In your request you state that the townships of Lockwood and Smith voted a \$50,000.00 bond issue and erected the Good Shepherd Rest Home. We assume that these are general obligation bonds rather than revenue bonds. Such general obligation bonds are an indebtedness of Lockwood and Smith townships which voted and issued them. Assuming that the bonds were validly issued, Lockwood and Smith townships are obligated to pay them. They are obligations of the townships and of the townships alone, and we know of no statutory authority or method of shifting the responsibility for the payment of this obligation from Lockwood and Smith townships to Dade County. The first part of your question is whether funds from bonds voted and issued by the county can be used to pay the present bonds owed by Smith and Lockwood townships. You do not give any information concerning the procedures, methods or mechanics involved in the payment of the township bonds by the county. In subsequent correspondence you indicated that Smith and Lockwood townships will sell the Good Shepherd Rest Home to Dade County. We first deal with the authority of such a sale and purchase.

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In regard to the authority of Lockwood and Smith townships to sell the Good Shepherd Rest Home to Dade County, we call your attention to Section 65.270, RSMo, which reads as follows:

"No township shall possess any corporate powers, except such as are enumerated or granted by this chapter, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or granted."

In view of this section, it is essential that Lockwood and Smith townships have specific statutory authority for the sale of the Good Shepherd Rest Home. The only statute we have found which can be construed to give such authority is Section 65.260, RSMo, which provides that each township shall have power and capacities:

"(4) To make such orders for the disposition, regulation or use of its corporate property as may be conducive to the interest of the inhabitants thereof."

It is our opinion that this is sufficient authority for the sale of the Good Shepherd Rest Home by Lockwood and Smith townships to Dade County if such disposition is conducive to the interest of the inhabitants of the townships.

Dade County has statutory authority to purchase the Good Shepherd Rest Home. The county court is authorized by Section 205.375, RSMo, to:

"(2) . . . acquire land to be used as sites for [nursing homes] . . . ."

"Land" has been given the common-law definition in Missouri which "includes all buildings of a permanent nature standing thereon" as well as the land. Union Central Life Insurance Co. v. Tillery, 152 Mo. 421, 54 S.W. 220. Bituminous Casualty Corp. v. Walsh and Wells (Mo. App.), 170 SW2d 117.

"Site" is defined in Webster's New International Dictionary, 3rd Edition, as: "2(a) the local position of building, town, monument, or similar work either constructed or to be constructed; (b) a space of ground occupied or to be occupied as a building."

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"Land" and "site", then, include both the land and the buildings thereon, so that under the most liberal construction of the phrase "acquire land to be used as sites for", the county court may acquire land with buildings thereon for the purpose of establishing a nursing home.

In addition the general statutes give county courts power to acquire land. Section 49.270, RSMo 1959, provides:

"The said court shall have . . . power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; \* \* \*." (Underscoring ours)

As a nursing home is for the use and benefit of the county, the county court may acquire land therefor by purchase, lease or by donation.

We assume that the bonds to be voted by Dade County are general obligation bonds rather than revenue bonds and therefore this opinion is limited to the issuance of general obligation bonds and we are not making any ruling relative to the use of revenue bonds.

Issuance of general obligation bonds by a county and indebtedness of a county are covered by Article VI, Section 26(a), 26(b), and 26(c), Missouri Constitution 1945, and by Chapter 108, RSMo 1959. Sections 108.010 and 108.020, RSMo 1959, provide:

"108.010. Any county in this state, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years; provided such indebtedness shall not exceed five per cent of the value of taxable tangible property therein as shown by the last completed assessment for state and county purposes."

"108.020. Any county in this state, by vote of two-thirds of the qualified electors thereof voting thereon, may incur an indebtedness for county purposes in addition to that authorized in section 108.010 not to exceed five per cent of the taxable tangible property shown as provided in said section."

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Under these provisions a county may incur an indebtedness for county purposes not to exceed ten per cent of the value of the taxable tangible property shown at last completed assessment for county purposes. It would be necessary to determine that the amount to be expended in the acquisition of the land and buildings will not exceed this limit before the indebtedness may be incurred to acquire such land and buildings.

The conclusions we have reached thus far are that Lockwood and Smith townships have authority to sell the Good Shepherd Rest Home to Dade County and Dade County has authority to purchase the Good Shepherd Rest Home from Lockwood and Smith townships. Lockwood and Smith townships will still be obligated to pay the bonds issued by the townships, the proceeds of which were used to purchase and construct the Good Shepherd Rest Home. Dade County has authority to issue county-wide bonds and use the proceeds for the purchase of the Good Shepherd Rest Home. We do not make any ruling concerning the procedures, mechanics or other financial arrangements which may be involved in the sale or purchase.

In the absence of specific facts on the exact methods and procedures by which the money from the county bonds is to be used to pay the present bonds owed by Smith and Lockwood townships, we are unable to give an opinion as to their validity and the conclusions we have reached and stated above must suffice as an opinion on the first part of your question.

In answer to the second part of your question we are of the opinion that the county court may issue county-wide bonds to pay for the construction of additional space for the nursing home. Authority for this is found in Section 205.375, supra, which provides:

"3. For the purpose of providing funds for the construction and equipment of nursing homes the county courts or township boards may issue bonds as authorized by the general law governing the incurring of indebtedness by counties, or may provide for the issuance and payment of revenue bonds in the manner provided by and in all respects subject to chapter 176, RSMo, which provides for the issuance of revenue bonds of state educational institutions."

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By this subsection, funds for the construction and equipment of nursing homes may be provided by the issuance of general obligation bonds under the general law regulating the incurring of indebtedness, and subject to the limitation of the constitution and statutes. In our opinion this includes the construction and equipment of such additions to the nursing home.

CONCLUSION

It is therefore the opinion of this office that Lockwood and Smith townships may sell and Dade County may purchase the Good Shepherd Rest Home. Lockwood and Smith townships are obligated to pay the bonds issued by those townships for the original purchase and construction of the Good Shepherd Rest Home. Dade County is authorized to issue county-wide bonds and use the proceeds for the purchase of the Good Shepherd Rest Home. Dade County may issue general indebtedness bonds and use the proceeds for the construction and equipment of additions to the Good Shepherd Rest Home.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Wayne W. Waldo.

Yours very truly,

THOMAS F. EAGLETON  
Attorney General

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