

CREDIT UNIONS: Missouri credit unions are authorized to invest their funds in bonds of school districts.

OPINION No. 27 [1963]

January 24, 1963



Honorable R. B. Mackey  
Acting Commissioner of Finance  
Jefferson Building  
Jefferson City, Missouri

Dear Mr. Mackey:

This opinion is rendered in reply to a request over the signature of I. W. Whitson, Supervisor of Credit Unions, such request reading, in part, as follows:

"May a Missouri State Chartered Credit Union invest in bonds issued by school districts in Missouri."

A Missouri credit union's power to invest its funds is found in the following language from Section 370.070 RSMo 1959:

"A credit union shall have the following powers:

\* \* \* \* \*

(3) It may invest, through its board of directors, in the bonds of the United States, or of any state thereof or of any municipality, the bonds of which municipality are legal investments for savings banks in the state of Missouri and in the shares of credit unions to which it is eligible to memberships. \* \* \*

Language quoted from subparagraph (3) of Section 370.070 RSMo 1959, supra, makes no mention of bonds of a school

Honorable R. B. Mackey

district as a lawful investment for credit unions but it does refer to bonds of any municipality which are legal investments for savings banks of Missouri, and sanctions the same as proper investments for credit unions.

At this point we are confronted with the fact that House Bill No. 102, passed by the 70th General Assembly of Missouri, Laws of Missouri, 1959, effected an outright repeal of Chapter 364 RSMo 1949, as amended, entitled "Savings Banks And Safe Deposit Institutions." We are thus faced with construing a statute, Section 370.070 RSMo 1959, which incorporates, by general reference, certain provisions of Section 364.070 RSMo 1949, which were repealed in 1959.

In order that we may have before us the pertinent provisions of Section 364.070 RSMo 1949, now expressly repealed, we quote pertinent provisions from such statute as follows:

"All sums so received, except those held as bailee for safekeeping and storage only, and the income derived therefrom, and all moneys entrusted to any such corporation, by order of court or other lawful authority, shall be invested only as follows:

\* \* \* \* \*

(4) In bonds of any city, county, town, township or school district of this state that has not defaulted in the payment of any part of either principal or interest thereof, within five years previous to making such investment; and provided, such bonded debt does not exceed five per cent; \* \* \*"

The first issue which presents itself for determination is: Did the Legislature by repealing Chapter 364 in its entirety intend to eliminate as legitimate invest-

Honorable R. B. Mackey

ments by credit unions "the bonds of . . . any municipality . . ." which bonds "are legal investments for savings banks?" In the premises, we believe that all that can be inferred from repeal of Chapter 364 is a legislative intent to do away with savings banks and not to inhibit investment practices of credit unions.

We are aware of the cases which have held that in order for a statute, which adopts another, to survive the repeal of the adopted statute, the adoption must be by specific descriptive reference. *State v. Williams* (Mo. Sup., 1911), 140 S. W. 894; *Gaston v. Lanekin* (Mo. Sup., 1893), 21 S. W. 1100. However, we are also cognizant of the principle that "the basic rule of construction of an ordinance or statute is to first seek the lawmakers' intention, and if possible to effectuate that intention." *Laclede Gas Co. v. City of St. Louis* (Mo. Sup., 1953), 253 S. W. 2d 832, 835. Moreover, we also have the rule that "The repeal of a statute by implication is a matter of legislative intent, is not presumed and is not favored." *State v. Oswald* (Mo. Sup., 1957), 306 S. W. 2d 559, 562.

Applying these latter rules to the instant case, we must conclude that the repeal of Chapter 364 cannot be regarded as impliedly repealing so much of Section 370.070 as authorizes credit unions to invest in municipal bonds. It is obvious from a reading of Section 370.070 that the legislature intended credit unions to have such power limited only by the qualification that these bonds must be of the type in which savings banks could invest. It cannot be reasonably said that the elimination of the qualification as a result of the elimination of savings banks must be regarded as a revocation of the authority granted to credit unions by Section 370.070.

The general rule is stated in 82 C.J.S., Statutes, Section 370, page 847, thusly:

"As a rule the adoption of a statute by reference is construed as an adoption of the law as it existed at the time the adopting statute was passed, and, therefore, is not affected by any subsequent modifica-

Honorable R. B. Mackey

tion of the statute adopted unless  
an intention to the contrary is  
clearly manifested; \* \* \*

In *Devery v. Webb* (Idaho Sup., 1937), 70 P. 2d 377, a situation analogous to the instant case arose when a statute governing the organization of highway districts was repealed. The statute which sets out the procedure for dissolving such a district, I.C.A. Section 39-1582, provided, in part, that a highway district could be dissolved when a petition was signed by "a majority of the persons possessing the qualifications necessary to sign a petition for the organizing of such highway district . . ."

Since the repeal of the organizing statute eliminated the concept of a person who possessed the "qualifications necessary to sign a petition for the organizing of such highway district . . .," the argument was made that the repeal of the organizing section, I.C. 379, "destroyed the means whereby highway districts might be disorganized."

In rejecting this contention, the court said, I. C. 379:

"[3,4]. Where a specific provision or direction of a statute is referred to and adopted by a subsequent enactment, the repeal of the former statute does not work a repeal of the specific portion thereof adopted in the latter, so far as the same is requisite or applicable to the operation and enforcement of the subsequent statute."

In the instant case, we adopt the view that credit unions may still invest in municipal bonds and that the type of municipal bonds in which they may invest are those set out in the now repealed Section 364.070 RSMo 1949.

Having so held, it is necessary to determine whether a school district is a "municipality" as that term is used in Section 370.070. Perhaps, the clearest guide to the meaning of that term is the series of words

Honorable R. B. Mackey

which appear in the statute it adopts by reference. Section 364.070(4) RSMo 1949, permitted savings banks to invest in "bonds of any city, county, town, township or school district . . ." It would certainly appear that the legislative intent in the use of the word "municipality" in Section 370.070 was that the word should be regarded as embracing all the specific terms appearing in Section 364.070(4). The only alternative to such a holding would be that the Legislature meant to exclude some and include others, without specifying which category each was to fall into. At best, such a conclusion is highly unlikely.

Moreover, it is clear that the term "municipality" encompasses far more than the classic concept of a city. In holding that the St. Louis Housing Authority is a municipality, our Supreme Court said in *St. Louis Housing Authority v. City of St. Louis* (1951), 239 S. W. 2d 289, 294-295:

"Municipality now has a broader meaning than 'city' or 'town,' and presently includes bodies public or essentially governmental in character and function and distinguishes public bodies, such as plaintiff, from corporations only quasi-public in nature. 42 C.J. p.1413; 61 C.J.S., Municipal, page 945; *Curry v. Sioux City Dist. Tp.*, 62 Iowa, 102, 17 N.W. 191. But the two terms (municipality and municipal corporation) are often interchangeably used. Likewise, 'municipal corporation,' in the broader sense now includes public corporations created to perform an essential public service and 'is applied to any public local corporation exercising some function of government.' 'Municipal corporation' now also includes a corporation created principally as an instrumentality of the state but not for the pur-

Honorable R. B. Mackey

pose of regulating the internal local and special affairs of a compact community."

See, also, Russell v. Frank (1941), 348 Mo. 533, 154 S.W. 2d 63, in which a Missouri school district was held to be a municipality, and Laret Investment Co. v. Dickmann (1939), 345 Mo. 449, 134 S. W. 2d 65, in which the Supreme Court discusses the broad application of the term "municipality."

Under some circumstances, the term "municipality" possibly would not include a school district. However, under the facts of this case, we believe that the term "municipality" in the adopting statute was meant to include all of the specific terms used in the adopted statute.

#### CONCLUSION

It is, therefore, the opinion of this office that credit unions organized in Missouri may invest their funds in bonds of school districts which otherwise qualify under the terms of the now repealed Section 364.070 RSMo 1949.

This opinion, which I hereby approve, was prepared by my assistant Albert J. Stephan, Jr.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

AJS lc