

August 20, 1965



Honorable John T. Russell
State Representative
Laclede County
Lebanon, Missouri

Dear Mr. Russell:

This is in response to your request dated August 10, 1965, for an opinion on the following questions:

- "No. 1 - Will Industrial Revenue Bonds in anyway, or in any event affect the taxation of the City's citizens or their property?
- "No. 2 - Is it correct to assume, in event of default by the leasee the city will not be liable to assume the obligation?
- "No. 3 - Would other Revenue Bonds, such as Electric and Water Bonds affect the taxes within the city?"

Article VI, Section 27, of the Constitution of Missouri relating to revenue bonds provides:

"Any city or incorporated town or village in this state, by vote of four-sevenths of the qualified electors thereof voting thereon, may issue and sell its negotiable interest bearing revenue bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending or improving any of the following: * * * *; (2) plants to be leased to private persons or corporations for manufacturing and industrial development purposes, including the real estate, buildings, fixtures and machinery; or (3) * * * *, the cost of operation and maintenance and the principal and interest of the bonds to be payable solely from the revenues derived by the municipality from the operation of the utility or the lease of the plant. Amendment adopted at general election Nov. 8, 1960."

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Section 71.820, RSMo 1963 Cum. Supp., enacted by the Legislature in 1961, pursuant to the foregoing Section 27, Article VI, of the Constitution provides:

"Any municipality may issue revenue bonds to provide funds for the carrying out of a project under sections 71.790 to 71.850. The revenue bonds shall be paid solely from revenue received from the project, and shall not be a general obligation of the municipality."

Section 71.830, RSMo 1963 Cum. Supp., provides that the city shall prescribe the form of the bonds by ordinance. Section 71.833, RSMo 1963 Cum. Supp., provides:

"At or before the issuance of the revenue bonds the governing body shall, by ordinance, create a sinking fund for the payment of the bonds and the interest thereon, and shall set aside and pledge a sufficient amount of the revenues of the project to be paid into the sinking fund at intervals to be determined by ordinance prior to the issuance of the bonds, for

(1) The interest upon the bonds as such interest shall fall due;

(2) The necessary fiscal agent charges for paying bonds and interest; and

(3) The payment of the bonds as they fall due or if all of the bonds mature at the same time, the proper maintenance of a sinking fund sufficient for their payment at maturity."

Section 71.837, RSMo 1963 Cum. Supp., provides:

"Revenue bonds issued under sections 71.790 to 71.850 shall not be payable from or charged upon any funds, other than the revenue pledged to the payment thereof, nor shall the municipality issuing the bonds be subject to any pecuniary liability thereon. Each revenue bond issued under sections 71.790 to 71.850 shall recite, in substance, that the bond, including interest thereon, is payable solely from the revenue pledged to the payment thereof and that the bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation."

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The Supreme Court of Missouri en banc in City of Maryville vs. Cushman, 249 SW2d 347, 351, in discussing the liability of municipality for sewer and revenue bonds, said:

" * * * The taxing power of the municipality is not pledged and it is specified that the bonds shall not be a general obligation of the city within the constitutional provision. We have many times ruled that bonds payable solely from the revenues of a municipal utility, service or facility, and not from taxation, are not a general municipal indebtedness within the Constitution. * * * "

Also in Bader Realty and Insurance Company vs. St. Louis Housing Authority, 217 SW2d 489, 494, the Supreme Court of Missouri en banc held that the revenue bonds of the Housing Authority were not an indebtedness of the City of St. Louis. Likewise in State ex rel City of Fulton vs. Smith, 194 SW2d 302, 306, the Supreme Court of Missouri held that the city's taxing power was not pledged to the payment of water and electric plant revenue bonds.

Therefore, municipal revenue bonds do not authorize the city to tax property of the owners to pay said bonds. In the event of default of revenue bonds, neither the city nor the taxpayers thereof are liable for the payment of such revenue bonds. Revenue bonds are paid from revenue specifically provided for in the bonds and not from any other source of the city's revenue.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

JGS/jlf