

COUNTIES:
COUNTY COURT:
TAXATION:
BONDS:

A county court is authorized to expend such amount of tax revenues raised to create a bond service fund for the county's unissued hospital bonds as is needed to pay obligations

incurred in furtherance of the purpose for which the bonds were authorized. Tax proceeds so expended must be replaced as soon as the hospital bonds are issued. A county court is authorized to replace these bonds with the bond proceeds.

OPINION NO. 115

August 14, 1969

Honorable Franklin D. Holder
Prosecuting Attorney
Court House
Dunklin County
Kennett, Missouri 63857



Dear Mr. Holder:

This opinion is in response to your letter of recent date in which you request an official opinion from this office on the following question:

May tax proceeds collected for the payment of the principal of and the interest on bonds authorized but not yet issued to finance a county hospital be drawn upon by the County Court to pay architect and consultant fees incurred in connection with the planning of the hospital and then replaced by proceeds of said bonds when they are issued?

Two distinct questions are raised by your request: (1) Whether proceeds from the taxation of tangible property in Dunklin County intended for the payment of the interest on and the principal of bond indebtedness may be used temporarily to satisfy obligations of the county in furtherance of the project for which the bonds were authorized, and (2) Whether proceeds from the bonds when sold may be channeled into the county's bond service fund to replace any tax proceeds previously used to meet these obligations.

Section 108.180, RSMo 1959, directs in pertinent part:

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"When any bonds shall have been issued by any county, city, incorporated town or village, school district, or other political corporation or subdivision of the state, as provided under the constitution and laws of this state for the incurring of indebtedness, or for refunding, extending, unifying the whole or any part of their valid bonded indebtedness, the proceeds from the sale thereof and all moneys derived by tax levy, or otherwise, for interest and sinking fund provided for the payment of such bonds, shall be kept separate and apart from all other funds of such governmental unit, so that there shall be no commingling of such funds with any other funds of such county, city, incorporated town or village, school district, or other political corporation or subdivision of the state; provided, that in no case shall the proceeds derived from the sale of any such bonds be used for any purpose other than that for which such bonds were issued, nor shall such interest and sinking fund be used for any purpose other than to meet the interest and principal of such bonds; . . ."

One obvious purpose of this statute is to assure purchasers of bonds of political subdivisions of the state that interest and principal will be paid when due. The condition in the statute, "When any bonds shall have been issued. . .", is in accord with this purpose, for if there are no bondholders there can be no need for such assurances. In the case posed, the bonds have been authorized but not issued and, therefore, the command of Section 108.180, RSMo, that a fund be created solely for the purpose of paying the interest on and the principal of bonded indebtedness is not operative here.

It is the opinion of this office that the tax proceeds involved are still general proceeds of the county and may be used for the purpose of paying the architect and consultant's fees if they were properly incurred. It is clear that any obligations of a political subdivision which may be met through the proceeds of bonded indebtedness may be met as well out of general revenues. See *Mississippi County vs. Jackson*, 51 Mo. 23 (1872).

It should be noted, however, that upon the issuance of the bonds in question, the tax proceeds here involved must, pursuant to the command of Section 108.180, RSMo, be segregated as a bond service fund. The tax proceeds previously used to pay obligations incurred

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in furtherance of the purpose for which the bonds were authorized must be immediately replaced to insure payment of all interest on and principal of the bonds when due.

This leads to consideration of the question whether proceeds from the sale of the bonds may be directed into the bond service fund to replace those tax proceeds used to pay the architect and consultant's fees. Section 108.180 directs that, ". . .in no case shall the proceeds derived from the sale of any such bonds be used for any purpose other than that for which such bonds were issued, . . ."

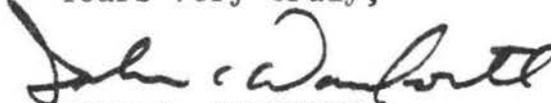
In permitting the County Court to channel bond proceeds into the bond service fund, the intention of the legislature to prevent the diversion of bond proceeds is clearly served, though indirectly. Whatever bond proceeds are directed into the bond service fund would have been applied to the payment of the architect and consultant's fees directly. It should make no difference then that these bond proceeds are used instead to replace tax proceeds which have been so applied, and it is the opinion of this office that bond proceeds are used for the purposes for which the bonds are issued when they are channeled into a bond service fund to replace tax proceeds applied as previously stated.

CONCLUSION

The Dunklin County Court is authorized to expend such amount of tax revenues raised to create a fund to pay the interest on and the principal of the county's unissued hospital bonds as is needed to pay architect and consultant's fees properly incurred in furtherance of the purpose for which the bonds were authorized. However, the tax proceeds so expended must be replaced as soon as the hospital bonds are issued. The Dunklin County Court is further authorized to replace these proceeds with proceeds obtained from the issuance of the hospital bonds.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Harvey L. Zuckman.

Yours very truly,



JOHN C. DANFORTH
Attorney General