

COUNTIES: Construction of Section 2922 R. S. Mo.
1929, authorizing issuance of bonds for
funding prior county indebtedness.

May 15, 1940

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Mr. Omer Casey
Treasurer
Cedar County
Stockton, Missouri

Dear Sir:

We are in receipt of your request for
an opinion from this department, which said re-
quest reads as follows:

"I am writing you for an opinion
which may be entirely out of order
on my part. We have issued in 1936
about \$6000.00 worth of warrants
for which there are no funds to pay
and only about \$500.00 back taxes.
In checking the county budget for that
year I find that these warrants were
issued in the bounds of the budget
which was approved by the State Audit-
or's office, but there were some
\$6800.00 of anticipated revenue that
never was collected. This revenue
was supposed to have been earned by
a county road grader charging for work
done in road districts. In that case
can the holders of the warrants file
suit and collect for such warrants and
if so what steps for raising funds could
be taken?"

In looking over our files I note that we prepared an opinion for you under date of September 28, 1939. From reading the opinion we presume it touched on the situation that you refer to in your opinion request. We presume that which you have in mind is funding bonds and we call your attention to Section 2922 R. S. Missouri, 1929, which reads as follows:

"County and municipal authorities are hereby authorized to submit to the qualified voters of any county, city or village, at any special election held for that purpose, or at any primary or general election held under the laws of this state, a proposition whether any judgment indebtedness of such county or municipality shall be funded; and if two-thirds or more of the qualified voters of such county or municipality voting on the proposition shall assent thereto, such county or municipality shall be authorized to borrow upon its credit the amount of money authorized to be borrowed, and to issue, negotiate, and sell coupon funding bonds of such county or municipality, maturing serially, in not more than twenty years after their date in annual amounts as nearly equal as may be practicable, payable to bearer, with interest payable semi-annually, at a rate not exceeding six per centum per annum; and from the proceeds of the sale or sales thereof to satisfy and discharge such judgment indebtedness. The assent of two-thirds or more of the said qualified voters to such proposition and the issuance of such funding bonds under this section shall be deemed and held by all courts in this state to be, to all intents and purposes, the incurring of a new indebtedness; and thereafter no question shall ever be raised in any

court as to the validity of such indebtedness, except questions of constitutional limitation of indebtedness. And such funding bonds shall not be exchanged or delivered in payment of such judgment indebtedness nor any part thereof. The provisions of this section shall not be deemed to be repugnant to nor inconsistent with section 2892, Art. 4, Chap. 15, R. S. 1929; but the power and authority hereby conferred shall be deemed to be cumulative thereof."

In the case of State ex rel. Clark County v. Hackman, State Auditor, 218 S. W. 318, the court, at l. c. 319, had this to say:

"The counties of the state, in anticipation of their yearly revenue, issue warrants against such revenue. The county authorities know from the assessed values and the tax rates just what revenue should come in for the year. They often issue warrants up to the very limit of the anticipated revenue, and these warrants we have held to be valid obligations of the county. This on the theory that the warrants represent valid contracts made during the year. By valid contracts we mean contracts within the anticipated revenue of the year. Thus in Trask v. Livingston County, 210 Mo. loc. cit. 594, 109 S. W. 659, 37 L.R.A. (N.S.) 1045, it is said:

"It has been uniformly construed that this provision of the Constitution permits the anticipation of the current revenues to the ex-

tent of the year's income in which the debt is contracted or created and prohibits the anticipation of the revenues of any future year.' "

On page 324, the court said:

"Whilst section 12, art. 10, inhibits counties from contracting debts 'exceeding in any year the income and revenue provided for such year,' yet in addition to this inhibition is a grant of authority to contract in excess of the yearly income and revenue, with 'the assent of two-thirds of the voters thereof voting at an election to be held for that purpose.' If this is not a grant of the authority, there is no such authority. Without this grant the Legislature would be powerless, and no law passed by the Legislature could give it. This because of the broad and positive restriction in the first paragraph, so that, for the ordinary and usual county public purposes, the real grant to hold an election comes from the Constitution. And where no machinery has been provided for such an election, it is sufficient if there is used the ordinary and usual machinery provided for obtaining the expression of the votes upon the question. In this case the Legislature in 1919 has specifically provided the method, (see section 2922, supra), which is not materially different from the one used here, but if our views of the situation are correct, there would be a useless expenditure of money to require a new vote under the act of 1919. We think there was authority for the election without this act, and

that the act was passed to make assurance doubly sure."

In the case of State ex rel. Jackson County et al. v. Waltner, Judge, et al., 100 S. W. (2d) 272, l. c. 276, the court had this to say:

"Section 2922 authorizes counties to submit to vote at a special election a proposition to issue funding bonds which must receive the assent of two-thirds or more of the qualified voters voting on the proposition. Section 2926 provides that wherever and whenever any county, etc., shall have issued bonds under and by authority of any provision of the Constitution of the state of Missouri or any law enacted in pursuance thereof, such county may file in the circuit court of the county having jurisdiction of the subject-matter a petition for a pro forma decree authorizing the issuance of such bonds. Section 2927 provides for the publication of notice of such proceeding and permits any taxpaying citizen to file an intervening petition contesting the validity of such bonds. Section 2928 provides that upon a hearing, the court shall carefully investigate the record concerning such bond issue, together with all evidence and proofs submitted at such hearing, and if the court be of the opinion that said bonds are legal and that bonds are legal and that the laws of the state have been complied with, then such court shall make an order and decree adjudging such bonds to be valid."

In the case of State ex rel. Gilpin, et al. v. Smith, 96 S. W. (2d) 40, l. c. 42, the court had this to say:

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"We think that these bonds should be certified and registered by the respondent.

"It will be unnecessary for us to pass on the relators' contention that sections 2922 and 2923, R. S. Mo. 1929 (Mo. Stat. Ann. Secs. 2922, 2923, p. 765), authorizes Buchanan county to issue these bonds in question. Section 2922, supra, authorizes any county to submit to its qualified voters the proposition of issuing bonds of the county for the purpose of providing funds to satisfy and discharge any 'judgment indebtedness' of the county."

We are enclosing an opinion rendered on February 21, 1939, to Honorable Marvin S. Carmichael, Associate Judge of Nodaway County Court, Marysville, Missouri, which opinion explains and holds how unpaid county indebtedness may be paid from surplus revenues, which opinion is herewith enclosed for the purpose of your convenience.

CONCLUSION

If the method explained in the enclosed opinion is not adequate, then we conclude that after judgment has once been obtained on the warrants referred to in your opinion request, a special election could be held in compliance with section 2922, and other sections in Article 7, Chapter 15, R. S. Mo. 1929. If the requisite vote was procured, funding bonds could be issued and sold to satisfy whatever judgments had been obtained on the warrants, and this

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would constitute a further method of collecting on the past indebtedness of the county referred to in your opinion request.

Respectfully submitted,

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A PROVED:

COVELL R. HEWITT
(Acting) Attorney General

BRC/rv

Enc.