

BRIDGE LAW:)
ST. CHARLES COUNTY BRIDGES:)
LEWIS & CLARK BRIDGE COMPANY:)

1. Validity of St. Charles County Bridge Contract.
2. Costs of operating, maintaining and repairing bridges must be paid out of bridge tolls before funds set aside for principal and interest on bonds.

June 27, 1936.

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Mr. Earl C. Gray
County Clerk
St. Charles County
St. Charles, Missouri

Dear Mr. Gray:

This is to acknowledge receipt of your letter in which you request the opinion of this Department, which letter is as follows:

"Questions would like to have answered concerning the proposed purchase of Lewis & Clark Bridges by St. Charles County.

"1. If the order of the Court authorizing the Presiding Judge and the County Clerk to sign the preceding agreement is rescinded by the County Court would said agreement be void.

"2. Should it not be possible to void the signed agreement does the law provide that operation and maintenance expense shall have priority over monthly payments for retiring revenue bonds.

"3. Is there anything in the statutes to prevent all expenses of the County Court and Clerk, and other County officials to be paid out of the tolls collected."

Attached to your letter of request is a transcript of the proceedings of the County Court of St. Charles County pertaining to the purchase by said County of the property of the Lewis and Clark Bridge Company.

During the May Term, 1936, on May 13, 1936, the seventh day of the May Term, the following record entry was made:

"In the matter of considering the purchase of the Alton-St. Louis Bridge Company Property.

"Alfred L. McCawley and William Waye representing the Lewis and Clark Bridge Company appeared before the Court relative to negotiations whereby the County of St. Charles would purchase the property of said bridge company and pay off the bonds issued in payment of the same, out of the revenue collected as toll. The purchase of this property would be according to an act passed by the 57th General Assembly of Missouri appearing in the laws of Missouri, Extra Session 1933-34 on pages 115 to 117 inclusive. Jos. B. Wentker, Prosecuting Attorney, acted as legal adviser for the County Court. No decision was reached and the Court continued the matter under advisement."

And on Wednesday, May 20, 1936, the eleventh day of the May Term, we find the following record:

"In the matter of the purchase of the Lewis and Clark Bridges.

"The Court at this time again takes up for consideration the purchase of the Lewis and Clark Bridge Company property. After due consideration of the matter, all judges concurring, it is hereby ordered, adjudged and decreed by the County Court of St. Charles County, Missouri, acting under and pursuant to the authority of an act of the 57th General Assembly of Missouri, approved December 22nd, 1933 and appearing in Laws of Missouri, Extra Session 1933-34 at pages 115 to 117 inclusive; that the said County enter into an agreement with the Lewis and Clark Bridge Company, a Missouri Corporation, which said agreement shall be substantially in the following form, to-wit:"

And following said record entry is the proposed agreement, consisting of fifteen pages, between the Lewis and Clark Bridge Company, a Missouri corporation, and the County of St. Charles, setting forth in detail and with particularity the proposed contract, in which contract the County agrees to purchase the Lewis Bridge spanning the Missouri River near Fort Bellefontaine, Missouri, and the Clark Bridge spanning the Mississippi River at Alton, Illinois, and having its southern terminus within said county for which said properties the county agrees to issue and deliver unto the Company in full and complete payment for said property toll bridge revenue bonds of said county in the principal amount of \$2,757,000.00, said amount of bonds to be issued in two series to be designated respectively, Series A and Series B; Series A in the principal sum of \$2,332,000.00, bearing interest at 3 3/4 per cent per annum, payable semi-annually, and the bonds of Series B in the amount of \$425,000.00 with interest at the rate of four per cent per annum, payable semi-annually. And it is further recited in said contract that all of said bonds shall be issued under the terms and provisions of the Act of the 57th General Assembly of the State of Missouri, Laws of Missouri, Extra Session, 1933-34, at pages 115 to 117.

And immediately following said contract and agreement, we find the following:

"Be it further ordered, adjudged and decreed by the court that the Presiding Judge of this court be and he is hereby authorized, ordered and directed to execute the foregoing contract on behalf of the County of St. Charles, and the Clerk of this Court be and he is hereby authorized, ordered and directed to attest such execution under the seal of the Court."

And we next find, on the same day of said court, an order for the issuance of the bonds, stated in the caption of said order of the County Court, as follows:

"An order authorizing and directing the issuance of two million, seven hundred and fifty-seven thousand dollars (\$2,757,000.00) toll bridge revenue bonds of the county of St. Charles, in the State of Missouri, under the provisions of House Bill Number 10 of the Acts of the Extra-

ordinary Session of the Fifty-Seventh General Assembly of Missouri (1933-34) for the purpose of providing funds for acquiring a toll bridge across the Missouri River near Fort Bellefontaine, Missouri, and having its northern terminus within said county, and a toll bridge across the Mississippi River at Alton, Illinois, and having its southern terminus within said county, together with roadways and approaches appertaining thereto; prescribing the form of said bonds and the interest coupons to be attached thereto, providing for the collection, segregation and distribution of revenues derived from the tolls to be charged for traffic on and over said bridges, and making provision for the payment of the principal of and interest on said bonds."

And then is set forth in full the contract referred to above.

Referring to the first question asked in your letter of request we take it that you desire to know whether or not the agreement entered into by the County Court with the Lewis and Clark Bridge Company may be rescinded without the consent of the bridge company, by the County Court, that is, if the order of the court authorizing the Presiding Judge and the County Clerk to sign the agreement is rescinded by the court, would said agreement be void?

We have very briefly set forth the orders of the County Court relative to the execution of this contract. The contract is set forth in full in the transcript accompanying your request, and reference may be made thereto.

Section 2962, Revised Statutes of Missouri, 1929, provides:

"No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract

be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing."

By the provisions of the Laws of Missouri, Extra Session, 1933-34, pages 115-117, by Section 2 thereof, counties and other public agencies are authorized to acquire, own and operate, construct, or aid in the construction, in whole or in part, improve or extend, and maintain toll bridges, etc., such as are described in the foregoing contract entered into between the Lewis and Clark Bridge Company and the County of St. Charles, Missouri. By Section 3 of said Act all public agencies named in Section 2 are authorized and empowered to issue negotiable toll bridge revenue bonds and sell such bonds to the United States government, or any other authorized agency thereof, or other investor or investors.

It will therefore be seen that under the Act of the 57th General Assembly, Extra Session, aforementioned, that counties such as St. Charles have the statutory authority to purchase, own and operate the bridges mentioned and described in said contract and agreement.

Coming now to the direct question asked in your letter, that is, is the contract entered into between the aforesaid parties revocable by St. Charles County without the consent of the Lewis and Clark Bridge Company? We do not think so on the face of the record as set forth in the transcript accompanying your request, and which is, of course, the only matter before us.

We assume, of course, that the May Term of the St. Charles County Court has not finally adjourned and is open for such lawful orders as may be made in connection with the above matter.

June 27, 1936.

No reasons have been stated by you in your request for the revocation of said contract; therefore, base our opinion solely on the bald question as to whether the county court may arbitrarily rescind the contract on the record before us. We take it that you mean whether or not the county court may, without incurring any future responsibility or liability, rescind the contract in question. Rescission has been defined in Black on Rescission and Cancellation, Vol. 1, 2d Ed., Section 1, page 3:

"To rescind a contract is not merely to terminate it, but to abrogate and undo it from the beginning; that is, not merely to release the parties from further obligation to each other in respect to the subject of the contract, but to annul the contract and restore the parties to the relative positions which they would have occupied if no such contract had ever been made. Rescission necessarily involves a repudiation of the contract and a refusal of the moving party to be further bound by it."

The County Court is a court of record. Article VI, Section 36, Missouri Constitution. There are many cases in Missouri to sustain the rule and it is well-settled that all courts of record have the power on their own motion to modify or set aside judgments, orders or entries during the term at which they are made.

In Re Henry County Mut. Burial Ass'n., 77 S. W. (2d) 124;
Bartling v. Jamison, 44 Mo. 141-145;
McNalty v. Hawkins, 163 Mo. App. 692-695;
Rottman v. Schmacker, 94 Mo. 139;
Aull v. St. Louis Trust Co., 149 Mo. 1;
Bruegge v. State Bank of Wellston, 74 S. W. (2d) 835;
Caldwell v. Lockridge, 9 Mo. 214.

The general rule on the question of reconsideration and rescission of contracts and acts by a county court is stated in 15 C. J. page 470, Section 123, as follows:

"Where a county board or court exercises functions which are administrative or

ministerial in their nature and which pertain to the ordinary county business, and the exercise of such functions is not restricted as to time and manner, it may modify or repeal its action; but in no event has such court or board the power to set aside or to modify a judicial decision or order made by it after rights have lawfully been acquired thereunder, unless authorized so to do by express statutory provision." (Italics ours)

The rule of law announced in Corpus Juris above is followed and reaffirmed in the case of Mead v. Jasper County, 266 S. W. 1. c. 469.

In Black on Recission and Cancellation, Vol. 2, 2d Ed., Section 332, page 892, it is stated:

"The ordinary rules governing the rescission of contracts are also applicable to contracts made by counties, cities, and other municipal corporations. Thus, a municipal corporation has no lawful right to repudiate or rescind a valid contract which it has lawfully entered into for the purchase of property, the supply of commodities needed for municipal purposes, or of gas, water, or electric light for municipal use, or the employment of persons to act for it in a business capacity, not being public officers or agents. For contracts of this kind are not made in the exercise of the governmental powers of the municipality, but of its proprietary or business powers, and are governed by the rules applicable to contracts made by individuals or business corporations. Such a contract, when fairly made, without fraud or imposition on the part of the other party, and without misconduct or bad faith in the officers acting in behalf of the municipality, and which is not unreasonable, cannot be repudiated by the municipality after the other party has expended money or labor in reliance on it, and so long as he complies with its provisions."

And in 15 C. J., page 555, Section 251, it is said:

"Where a county has, by its properly constituted authorities, entered into a valid contract, it cannot, without good ground and without the consent of the other contractual parties, rescind such contract;"

In the case of State v. Morgan, 144 Mo. App., 1. c. 40, it is said:

"The rule is well-settled that a county court may revise or rescind an order at the term or session at which such order is made provided this be done before any rights have accrued under the order. (11 Cyc., 403; Matthews v. Cook Co. Commissioners, 87 Ill. 590; Dresden v. County Com'rs, 62 Me. 365; Makemson v. Kauffman, 35 Ohio 444; Higgins v. Curtis, 39 Kan. 283; Campbell v. Park, 32 Ohio 544; Jaquith v. Putney, 48 N. H. 138."

This opinion is based solely on the contract and agreement and the record of the proceedings of the County Court of St. Charles County as contained in the transcript attached to your letter of request.

In the instant case the court considered the matter of the purchasing of the bridges while it was in session on May 13th, and on May 20th, in open court, the court had before it for consideration the contract in question and it ordered that the said county enter into an agreement with the Lewis and Clark Bridge Company, a Missouri corporation, and then set forth on its record said agreement and by record entry ordered and directed the Presiding Judge of said court to execute the foregoing contract on behalf of the County of St. Charles and the Clerk of the Court was authorized and ordered and directed to attest such execution under the seal of said court, which was accordingly done according to the record submitted herewith. Under the terms of this contract by Section 14 it is provided that after June 1, 1936, the net income of the operation of said

bridges shall accrue to and belong to the county and the bridge shall be operated by the Bridge Company until the final consummation of the contract.

It is, therefore, the opinion of this Department that the Lewis and Clark Bridge Company is bound by its contract and likewise the County of St. Charles, and the County cannot rescind said contract without the consent of the bridge company. There is no question but that the order made by the County Court directing the Presiding Judge to execute the contract could have been annulled before the execution of the contract but after it was signed and sealed by the officers of the County and accepted by the bridge company and rights had lawfully been acquired thereunder (except for matters dehors this record) it was then beyond the power of the County Court to rescind same, without the consent of the bridge company.

II.

Since it is our opinion that the contract submitted to us in the transcript of the proceedings cannot be rescinded by the county court without the consent of the Lewis and Clark Bridge Company, we come now to the second question requested in your letter.

The contract provides that the expenses of operating, maintaining and repairing the bridge shall be paid out of tolls before payment on the principal and interest of the bonds, we think it is plain that this contract must be so construed.

Under the provisions of Section 3 of Laws of Missouri, 1933-34, Extra Session, it is provided in part as follows:

"In the event of the issuance and sale of bonds authorized by this Act by a public agency, such agency shall charge a reasonable toll for the use of any such toll bridge, the amount of which toll shall be sufficient to pay the reasonable cost of maintenance, repairing and operating such bridge and to provide a sinking fund sufficient to amortize and repay any such loan, including interest and financing cost."

While the act itself does not state that the cost of maintaining, repairing and operating such bridge shall be paid before the provisions are made for the sinking fund, it is provided in the contract between the bridge company and the county that out of the gross income and revenues of said bridge after the necessary expense of maintaining, repairing and operating the same shall have been provided for, there shall then be set aside revenue for the payment of the interest and principal of the bonds.

We think it clear that when the contract is read in connection with the bridge act it is clear that the tolls must first apply to the maintenance, repairing and operation of the bridge and that the remainder should be applied to the sinking fund to retire the toll bridge revenue bonds.

In the case of State ex rel. City of Hannibal v. Smith, 74 S. W. (2d) 367, the City of Hannibal agreed to charge such toll for the use of the bridge as would be sufficient to pay the bonds and the interest and also the costs of operating, maintaining and repairing the bridge; however, in the event the revenue was insufficient to pay the bonds and the interest and the cost of operating, maintaining and repairing the bridge, the City of Hannibal agreed to pay these costs and expenses out of some other funds of the City but did not agree to pay the bonds and interest out of other funds.

From the above and foregoing it is our opinion that the cost of operating, maintaining and repairing the bridges must come out of the bridge tolls and must be taken care of first before funds are set aside for the payment of principal and interest on the bonds. In any event, under the bridge act and the contract under same, there is no liability on the taxpayers of St. Charles County for the payment of costs of operation, maintenance and repairing or principal and interest on bonds, but all must come out of bridge tolls alone.

As to the third question submitted, we will send a supplemental opinion on same.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:
