

COUNTY COURTS: Limits on borrowing money cannot exceed reasonably anticipated revenues for the year without a bond issue approved by the people.

November 13, 1936.



Hon. A. P. Kidder,
Presiding Judge,
Nodaway County Court,
Maryville, Missouri.

Dear Sir:

We have received your letter of November 10th, 1936, which is as follows:

"Some time ago a W. P. A. project was turned in as a County wide project for building and repairing necessary roads and bridges in Nodaway County. This project seems to have met with the approval of the local, St. Joseph, and Jefferson City offices, but in order to comply with the requirements, it will be necessary for Nodaway County to finance same to the extent of thirty-five to forty-five thousand dollars. Our Road and Bridge budget is used up on other roads. Our local attorneys tell us there is no way that they know of that the County Court could finance this project. Would you kindly give us your opinion in regard to this matter."

Attached to your letter is a letter from the Citizens State Bank of Maryville, Missouri.

We construe your letter to mean that your county for the present year has no funds available and unused arising from either your county revenue, your road and bridge revenue, or your special road and bridge revenue. Your question then is, does the county court have authority to borrow money or contract other debts this year for the purpose of assisting to the extent of from thirty-five to forty-five thousand dollars in the road project, the expense of which will in part be borne by federal funds, in completing a county-wide W. P. A. project.

Section 12 of Article X of the Missouri Constitution, in part, provides as follows:

"No county, city, town, township, school district or other political corporation or subdivision of the State shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose."

In the case of Holloway to use v. Howell County, 240 Mo. 601, the court, in discussing the authority of a county to go in debt, uses the following language, l. c. 613:

"The theory of our present system of county government is that counties must run their business affairs on the 'cash system'. * * * Running in debt is easy and pleasant while it lasts. Paying is 'another story'. The pleasure of debt making is denied by law to Missouri counties; they can anticipate their revenue, but only for the current year."

In the case of Watson v. Kerr, 279 S. W. 692, speaking on the same subject, the court said, l. c. 695:

"But, in construing the constitutional provision just quoted, we have repeatedly held that an indebtedness is not invalid merely because it appears at the end of the year in which it was created that the aggregate indebtedness incurred by the county during that year exceeded the revenue actually collected. If, at the time of its creation, the indebtedness is within the income which may reasonably be anticipated, it is valid."

In the case of Hawkins v. Cox, 334 Mo. 640, the court, in speaking of this same constitutional provision, said, l. c. 649:

"The plain meaning of this constitutional provision is that any such municipal corporation may spend or contract to spend (become indebted) 'in any (calendar)

year the income and revenue provided for such year,' but beyond that it cannot go in creating a debt for any purpose or in any manner, except by consent of two-thirds of the voters. This was so held in *Book v. Earl*, 87 Mo. 246, where the court said: 'The contracting of a debt in the future by a county in any manner or for any purpose in any one year exceeding the revenue which the tax authorized to be imposed would bring into the treasury for county purposes for such year, unless expressly authorized to do so by the assent of two-thirds of the voters' is prohibited."

It may be appropriate here to point out that there are recent cases in this state under the authority of which bridges have been built and other W. P. A. projects carried out by issuing bonds payable solely out of the revenues arising from those projects, but those cases are not in point on the matter you inquire about because there is no collection of revenue from a county-wide road system, and therefore this project could in no event be self-liquidating.

In the case of *Trask v. Livingston County*, 210 Mo. 582, l. c. 594, speaking about whether the indebtedness was created for the building of a bridge at the time of the letting of the contract or at some other time, the court said:

"Hence, the indebtedness for these bridges was created, if at all, by a compliance with the law governing the letting and contracting for bridges already noted. When the county became indebted on these bridge contracts must be determined by the 'income and revenue provided for such year,' which under the Constitution must be looked to for the payment of such indebtedness and it was the 'income and revenue provided' for the year 1889, which the county court was authorized to appropriate for that purpose, and not the revenue for the year 1890, which at the date of the contract for the building of said bridges had never been assessed, levied or collected."

In construing the above constitutional provision the Supreme Court of this state has, we think, clearly held that a county can not in a given year create a debt against the county revenues in excess of the revenues on hand and the reasonably anticipated revenues for that year. Likewise, the rule is announced

that if the county goes beyond the above limit, the contract is void. In the case of *Barnard & Company v. Knox County*, 105 Mo. 382, l. c. 390, the Supreme Court said:

"It is, of course, a hardship to the plaintiff to declare this warrant worthless, but we cannot dispose of the question on any such surface view of the matter. The Constitution seeks to protect the citizen and taxpayer, and their rights are not to be overlooked. It is the duty of persons dealing with counties and county officials, as well as of county officials themselves, to take notice of the limit prescribed by the Constitution. * * * Soliciting agents, contractors and others who deal with county officials must see to it that the limit of county indebtedness is not exceeded, and, if they fail to do this, they must suffer the consequences. Unless this is so, there is an end to all effort to bring about an economical and honest administration of county affairs."

Under the state of facts set forth in your inquiry as above interpreted, your county proposes to borrow this money at a bank, and the law as declared in the above expressions of the court in defining the rights and powers of county courts would be violated.

This opinion is limited to a discussion of whether borrowing this money violates the law pertaining to the authority of the county court to contract debts beyond the reasonably anticipated revenues of the county for the current year.

We have in mind the fact that it is commendable on the part of county officials to improve their county road system and to join in these W. P. A. projects, thereby not only improving their road system but furnishing employment for many people who need such employment, but it is our duty to construe the law as we find it, and when the law as written does not authorize the county court to so engage in such effort, it is a proper question to submit to the Legislature, who have the authority to change such law if in their wisdom they think best to do so.

CONCLUSION

It is our opinion that a county can not in a given year create a debt against the county revenues in excess of the revenues on hand and the reasonably anticipated revenues for that year, and that under the state of facts as above set forth your county would be violating this rule if it borrowed the money above set forth and thereby attempted to obligate the county to that extent, even though the money were spent for a worthy and commendable cause. If the county had no authority to enter into such a contract of borrowing, the attempted contract would be void, and we know of no way for the county to presently avail itself of additional cash except by a bond issue approved by the vote of the people.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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