

MUNICIPAL CORPORATIONS: Cities under thirty thousand under the Constitution may issue a specific levy for a water system, but the general law in all cities is that the bonds must be paid out of the revenues of the water or light system.

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February 2, 1940

Mr. Frank W. Kuehl, Counsel  
Reconstruction Finance Corporation  
Washington, D. C.



Dear Sir:

We are in receipt of your request for an opinion, under date of January 26, 1940, which reads as follows:

"This Corporation has acquired various general obligation bond issues of municipalities of the State of Missouri. We are interested in obtaining copies of any opinions rendered by your office concerning the allocation of tax levies.

For example, if a municipality has outstanding an issue of bonds to finance the construction of a water-works system and a separate issue of bonds to finance the construction of a sewer system, does the municipality levy a specific tax for the payment of principal and interest on each issue? Assuming the foregoing is true, are the moneys, when collected, immediately segregated and allocated to separate funds to be used only for the purpose for which such specific tax has been levied?"

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Section 12a, Article X, of the Constitution of Missouri, reads as follows:

"Any city in this State, containing not more than thirty thousand (30,000) inhabitants, may, with the assent of two-thirds ( $2/3$ ) of the voters thereof voting at an election held for that purpose, be allowed to become indebted in a larger amount than specified in section 12 of article 10 of the Constitution of this State, not exceeding an additional ten (10) per centum on the value of the taxable property therein, for the purpose of purchasing or constructing waterworks, ice plants, electric or other light plants, to be owned exclusively by the city so purchasing or constructing the same: Provided, That any such city incurring any such indebtedness requiring the assent of the voters, as aforesaid, shall have power to provide for, and before or at the time of incurring such indebtedness shall provide for the collection of an annual tax, in addition to the other taxes provided for by this Constitution, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty (20) years from the time of contracting the same, any provisions in this Constitution to the contrary notwithstanding."

The above section applies to cities under thirty thousand inhabitants, and by that section such city can provide for the collection of an annual tax, in addition to other

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taxes provided for in the Constitution to pay off the interest and indebtedness during a period of twenty years.

The general law applying to all cities, is set out in Article 31, Chapter 38, R. S. Missouri, 1929.

Section 7661 R. S. Missouri, 1929, reads as follows:

"The city council of any city of the first, second, third or fourth class in this state, or any city operating under a special charter, having three thousand inhabitants or more and less than one hundred and fifty thousand inhabitants shall have the power to erect, maintain and operate waterworks or to acquire waterworks by purchase as hereinafter provided, and to operate and maintain the same and supply the inhabitants thereof with water and to charge therefor reasonable rates as hereinafter provided."

Section 7667 R. S. Missouri, reads as follows:

"Whenever a proposition shall be submitted and adopted by a majority of the voters of the said city voting on the proposition, then the said waterworks system shall be conveyed to the city by the person, firm or corporation owning the same, which deed shall convey to the city a valid title to said property except

that such conveyance shall be subject to a vendor's lien for the purchase price of said plant, which shall be evidenced by bonds herein provided for, which shall be issued and delivered to the person, firm or corporation selling the property, in payment therefor. And the said city, for the purpose of paying for the waterworks plant, shall issue bonds to an amount equal to the agreed purchase price, which shall be known as the 'waterworks bonds,' and which shall constitute a first lien on the waterworks plant so acquired, and all the property connected therewith or thereafter acquired constituting a part of the said plant, including the income arising therefrom, it being the intent of sections 7661 to 7682, however, that there is to be no liability on the part of the city to pay the amount evidenced by said bonds out of any other fund than the one herein specified, and said bonds shall not constitute a liability of the city for which the general revenues thereof can be appropriated, or any part thereof, except to pay a reasonable fire hydrant rental for such hydrants as may be used by the city for the purpose of fire protection, and washing and flushing streets, crossings, alleys and sewers, as herein provided."

Section 7668 R. S. Missouri, reads as follows:

"The said waterworks plant and system, when acquired, shall be subject to the control and management of a board known as the 'board of waterworks commissioners,' who shall have the power to issue to the person, firm or corporation, in payment for said waterworks system, bonds in such denomination as may be stated in the proposition to the city or as may be determined by the board, which bonds shall refer to and recite sections 7661 to 7682, inclusive, as authority for their issuance, and shall be signed by each member of the board, attested by the secretary, under the seal of the board, and each bond shall contain substantially the following, among other appropriate recitals therein:

"This bond shall constitute a first lien in the nature of a mortgage or vendor's lien upon all the property, rights, issues and revenue of the waterworks system in this city, or in any way appertaining thereto, including any and all funds that may have been or may be derived therefrom, whether in existence at the time of the issuing of this bond or thereafter acquired, but this bond shall not create any personal or general liability on the part of this city or the persons signing the same for the payment thereof, and the same shall be paid only out of the property constituting the waterworks system and the revenue derived therefrom, on which it shall be a first lien, as aforesaid, and in case of default in the payment of the principal hereof, or any interest due thereon, for a period of six months,

all of the said property upon which it shall be a lien, as aforesaid, shall be conveyed by the waterworks commissioners to the holders of the waterworks bonds in the proportion that the bonds held by each bears to the entire bond issue: Provided, that said property may be conveyed to a trustee designated by a majority of the bondholders, to be held for the use of all the bondholders in the proportion aforesaid, and the conveyance of the said waterworks commissioners shall also convey all obligations due to the said board of waterworks commissioners from private corporations, individuals, or this city on account of water furnished or consumed, and shall also convey to them, their grantees and assigns, the right, privilege and franchise to continue thereafter the maintenance and operation of said waterworks system for a period of thirty years, and for that purpose to have the use of the streets, avenues, alleys and other public places of the city to maintain and operate the said waterworks plant.'

"The said bonds shall run for a period of twenty years and draw interest at the rate of six per cent. per annum, payable semi-annually, said interest to be evidenced by the coupons attached. The bonds and coupons shall be negotiable in form. The coupons may be signed only by



the lithographed signatures of the president of the board and the secretary thereof."

Under the above section the bond constitutes a first lien on all the property of the water system and also upon all of the revenue derived through the water system. In your request you ask if a municipality levies a specific tax. In cities under thirty thousand a specific tax may be levied which money must be only for the payment of the principal and interest indebtedness of the bonds. While under the general law no specific tax must be levied but the payment of bonds can be made only out of the revenues of the water department. The revenues of the water department can only be used for the operating of the water system and the payment of the interest and principal indebtedness.

Section 12, Article 10 of the Constitution of Missouri, partially reads 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; nor in cases requiring such assent shall any indebtedness be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein,

to be ascertained by the assessment next before the last assessment for State and county purposes, previous to the incurring of such indebtedness, except that cities having a population of seventy-five thousand inhabitants or more may, with the assent of two-thirds of the voters thereof voting on such proposition at an election to be held for that purpose, incur an indebtedness not exceeding ten per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes previous to the incurring of such indebtedness; such proposition may be submitted at any election, general or special; provided, That with such assent any county may be allowed to become indebted to a larger amount for the erection of court house or jail, or for the grading, construction, paving, or maintaining of paved, graveled, macadamized or rock roads and necessary bridges and culverts therein; and provided further, That any county, city, town, township, school district or other political corporation or subdivision of the State, incurring any indebtedness requiring the assent of the voters as aforesaid, shall before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same. \* \* \* \* \*



Under the above section sewer bonds can be voted, and it further provides for the collection of an annual tax sufficient to pay the interest as it falls due and also to constitute a sinking fund for the payment of the principal within twenty years from the time of contracting the same. Therefore, the money must be allocated to a separate fund to be used only for the purpose for which such specific tax has been levied.

Section 2896 R. S. Missouri, 1929, reads as follows:

"When any bonds shall have been voted or may hereafter be voted, as provided under the Constitution of the state, for the incurring of any indebtedness by any town, city, township, county, drainage, levee, county or school district, the proceeds from the sale thereof, and all moneys derived by tax levy for interest and sinking fund, as provided under the Constitution, shall be kept by the authorities of such town, city, township, county, drainage, levee, county or school district having control of said funds, separate and apart from any and all other funds of said town, city, township, county, drainage, levee, county or school district, so that there shall be no commingling of said funds with any other funds of said town, city, township, county, drainage, levee, county or school district. The proceeds of any bonds or the sinking fund or the interest collected by reason thereof that may be held by any town, city, township, county, drainage, levee, county or school district, shall, upon the passage of this section, if commingled with other funds of said town, city, township, county, drainage, levee, county or school district, be sepa-

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rated and deposited in a separate fund from any and all other funds. In no case shall the proceeds from the sale of any bonds so sold be used for any other purpose than for the purpose for which said bonds were voted, nor shall the sinking fund or interest collected to meet the interest on said bonds be used for any other purpose than to meet the principal and interest of said bonds."

Under the above section, all money collected on bond issues must be placed in a separate fund so as to retire the bonds with the interest thereon.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

TYRE W. BURTON  
(Acting) Attorney General

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