

MUNICIPALITIES:
BOARD OF PUBLIC WORKS:

Retirement of bond issue.

June 18, 1943

7/12
FILED

62

Honorable R. Leroy Miller
Prosecuting Attorney
Trenton, Missouri

Dear Sir:

We are in receipt of your letter of June 10, 1943,
requesting an opinion, which letter is as follows:

"Could you please advise me in an
opinion as to the legality of the
following transaction:

"The City of Trenton, Missouri has
\$5000.00 in their sinking and in-
terest fund which they would like to
turn over to the Board of Public Works
to pay principal and interest due on
electric light bonds; and in turn the
Board of Public Works would turn
\$5000.00 out of their operating fund
to the City of Trenton, Missouri to
be placed in the city's contingent
fund."

We are also in receipt of your letter of June 16,
1943, giving additional information on the above proposi-
tion, which letter is as follows:

"In answer to your letter of June
14---Trenton is a third class city;
the \$5000.00 in the sinking and in-
terest fund was derived from taxation
as allowed by the statutes of the

State of Missouri for such purposes; a separate depository is set up for the monies collected by the Board of Public Works; and the bond issue for the light plant was under statutes authorizing a city of this class to issue bond for the purpose of building a municipally owned light plant.

"I hope this will help you in rendering a decision and if you need any further information, do not hesitate to write me for it."

Article 31 of Chapter 58, R. S. Missouri, 1939, provides for the acquisition and operation of municipally owned utilities and the issuance and retirement of bonds in connection with same. The bonded obligation under this article is not an obligation of the city, but is an obligation secured by the plants and properties acquired, as appears from the language contained in Sections 7812 and 7813, R. S. Missouri, 1939.

"Sec. 7812. 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 7806 to 7827, 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."

"Sec. 7813. 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 7806 to 7827, 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."

Article X, Section 20, of the Missouri Constitution prohibits the diverting of funds, and is as follows:

"The moneys arising from any loan, debt or liability, contracted by the State, or any county, city, town or other municipal corporation, shall be applied to the purposes for which they were obtained, or to the repayment of such debt or liability, and not otherwise."

Section 7825, R. S. Missouri, 1939, provides that the funds raised under Chapter 38, Article 31, R. S. Missouri, 1939, shall not be diverted, and is as follows:

"The board of waterworks commissioners and the manager of the waterworks system shall be liable on their bonds for any willful or negligent misappropriation of the moneys or properties of the waterworks system, and no part of the said moneys or properties shall be diverted from the depository selected as provided in sections 7806 to 7827, inclusive, nor shall the city council or other officers

June 18, 1943

of the city have any power to divert the same, and the city, or any holder of the bonds issued under said sections, may at any time enjoin the misappropriation or waste of the funds of the waterworks system, or may by mandamus proceeding compel the raising of sufficient funds to comply with the provisions of section 7820, or the performance of any other duty enjoined on them. Any money recovered from any member of the board of waterworks commissioners, or the manager of such waterworks plant, or any sureties on their bonds, for failure to perform their official duties, or for the misapplication of any of the money or properties of the waterworks system, shall be paid into the depository selected under sections 7806 to 7827, inclusive."

Part III of Section 7820, R. S. Missouri, 1939, provides for the setting up of a sinking fund for the payment of said bonds, and further provides that, "Said sinking fund to remain in the depository to be selected as herein provided, and to draw interest."

We also submit herewith a copy of an opinion dated April 30, 1943, addressed to Honorable A. F. Pulliam, City Clerk, Sullivan, Missouri, which discusses the general question of handling the funds derived from the operation of a municipally owned light plant acquired under Chapter 38, Article 31, above mentioned.

We find no decisions rendered by the appellate courts of this state construing the provisions of said Chapter 38, Article 31, involving the questions under consideration.

CONCLUSION

The \$5000.00 in the sinking and interest fund, having been derived from taxation, cannot be used to pay the principal and interest due on the electric light bonds

Honorable R. Leroy Miller

-7-

June 18, 1943

because such use would be a diversion of funds raised by taxes belonging to the city for the payment of an obligation that is not an obligation of the city. As long as any of said bonded indebtedness remains unpaid, the \$5000.00 that the Board of Public Works proposes to turn over to the City of Trenton to be placed in the city's contingent fund should not be turned over to the city because such action would be in violation of Section 7825, R. S. Missouri, 1939, in that it would be a diversion of the fund from the purpose for which it was accumulated. We are of the opinion that there is no law prohibiting the Board of Public Works from applying the \$5000.00, or any other funds in its operating fund, toward the payment of principal and interest due on the bonds which are secured by the plant from the operation of which plant said funds were accumulated.

Respectfully submitted

LEO A. POLITTE
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

LAP:HR