MUNICIPALITIES:
TRAFFIC REGULATION:
OFF-STREET PARKING:

(1) Municipality of appropriate population may issue revenue bonds to provide off-street parking facilities without submitting proposition to vote of the electorate.
(2) Such bonds may not be retired from general revenue receipts of municipality.

FILED
67-54

March 11, 1954

Mr. Wm. Harrison Norton
Representative, Clay County
406 Armour Road
North Kansas City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

        "   * * *

        "My first question is: Is it possible for the City of Liberty to authorize a bond issue for the construction of off-street parking facilities without submitting same to a vote of the people.

        "My second question is: May the bonds be financed with the receipts from the parking meters presently installed in the city. In other words, can the City of Liberty pledge the parking meter receipts from their parking meters to the payment of the bonds. * * *"

Your attention is directed to Section 71.350, RSMo 1949, reading as follows:

        "Any incorporated city or town in this state of not more than seven hundred thousand and not less than one thousand population may rent, lease and improve property, or acquire property by gift,

purchase, exchange, or by the exercise
of the power of eminent domain over un-
improved property in the manner provided
by law for the condemnation of land for
street purposes in such municipality;
provided, however, that nothing herein
shall be construed to limit the right
to the use of eminent domain in connec-
tion with improved property used for or
devoted to commercial purposes, and may
construct, install or equip buildings
and facilities thereon for parking
motor vehicles, and may own, manage,
use or operate property and facilities
thereon for parking motor vehicles, or
rent or lease property and facilities
to others for parking motor vehicles,
and make or authorize the making of a
charge for the use of property and
facilities for such purpose, provided,
however, such municipality shall not
dispense or furnish or allow any lessee
or occupant to dispense or furnish, upon
or in connection with any property or
facility acquired or operated pursuant
to this section any product or service
other than the parking of motor vehicles."

It is readily apparent that by the enactment of this
statute the General Assembly has delegated to any municipality
having the appropriate population, within the maximum and mini-
mum limits set out, the authority to establish off-street park-
ing facilities.

Provision for the financing of such facilities has further
been made through the enactment of Section 71.360, RSMo 1949,
which reads as follows:

"Any such incorporated city or town is
hereby empowered to finance and pay for
the planning, designing, acquisition,
construction, equipment and improvement
of property for parking motor vehicles by
any one or combination of the following
methods:

"(1) General revenue funds, including
any proceeds derived from the operation
of said parking facilities;

"(2)   General obligation bonds within legal
debt limitations;

"(3)   Negotiable interest-bearing revenue
bonds, the principal and interest of which
shall be payable solely from the revenues
derived by such municipality from the
operation of such parking facilities, which
revenue bonds may be issued and sold by the
municipality when so authorized by the city
council, board of aldermen, or other legis-
lative authority of such city."

The constitutionality of these statutes has been up-
held by the Supreme Court of Missouri in Kansas City v.
Fishman, reported, 241 S.W. (2d) 377, wherein both statutes
were directly under attack. The same case also involved the
propriety of issuing revenue bonds to finance the acquisition
and construction of such off-street parking facilities, absent
an election having been held. The city council of the plain-
tiff city in the case mentioned had simply enacted an ordinance
authorizing the establishment and operation of the off-street
parking facilities.

The particular constitutional provision claimed to have
been violated was Section 27, Article VI of the Constitution.
The Supreme Court held that this particular constitutional
provision was inapplicable to the issuance of bonds of the
nature contemplated under Section 71.360, RSMo 1949, inasmuch
as the type of municipal facility under consideration was not
one requiring the assent of four-sevenths of the electorate
before revenue bonds might be issued. The Court in disposing
of the constitutional question held:

"* * * Thus this constitutional provision
prohibits the Legislature from authorizing
revenue bonds, for the purpose of paying
for municipally owned water, gas or electric
light works, heating or power plants or
airports, which are not approved by vote of
four-sevenths of the qualified electors.
However, we agree with appellant that the
proposed parking facility is not such a
utility as contemplated by this constitu-
tional provision; and, therefore, the
Legislature has complete authority to
authorize revenue bonds issued for that

> purpose. (Of course, other provisions of
> the Constitution prohibit the Legislature
> from making such revenue bonds payable out
> of funds raised by taxation as the authorities
> hereinafter cited show.) The Legislature has
> granted the authority for these revenue bonds
> to the City by enacting Sections 71.350-
> 71.360, R.S. 1949."

Your second question relates to the propriety of using receipts from parking meters now installed on the streets in the City of Liberty for the purpose of retiring bonds issued for the purpose of establishing and operating the off-street parking facilities.

Section 71.360, RSMo 1949, quoted supra, authorizes the issuance of two types of bonds. First, general obligation bonds within legal debt limitations and secondly, revenue bonds payable solely from the revenues derived from operation of parking facilities.

The receipts derived from parking privileges granted through the use of parking meters do not represent "taxes" but on the contrary are simply to be classed as "general revenue" of the city. Such receipts may be used for a legitimate municipal purpose. Therefore such receipts could be used to apply towards the retirement of bonds representing general obligations of the city which are issued pursuant to Subsection (2) of Section 71.360, RSMo 1949.

With respect to revenue bonds which might be issued under the provisions of Subsection (3) of Section 71.360, RSMo 1949, a different situation presents itself. You will observe that this statute limits the funds available for the retirement of such revenue bonds from revenues derived by the municipality from the operation of off-street parking facilities. This authorization does not seem to be broad enough to include receipts derived from parking meters installed elsewhere on the streets of the city.

CONCLUSION

In the premises we are of the opinion that a city of the appropriate population within the maximum and minimum limits fixed by Section 71.350, RSMo 1949, may provide by

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ordinance for the establishment and operation of off-street parking facilities and for the issuance of revenue bonds for such purposes as provided by Subsection (3) of Section 71.360, RSMo 1949, without submitting the proposition to the vote of the electorate.

We are further of the opinion that the receipts derived by such municipality from parking meters installed elsewhere than upon such off-street parking facilities may not be devoted to the retirement of such bonds.

We are further of the opinion that if general obligation bonds of the city are issued pursuant to authorization therefore having been voted by the inhabitants within legal debt limitations as provided by Subsection (2) of Section 71.360, RSMo 1949, such parking meter receipts may be so used for the retirement of such general obligation bonds.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

WFB:vlw