MUNICIPAL CORPORATIONS: Jefferson City, being a city of the third class may issue bonds for the erection of a municipal office building that may be partly used by state offices.

December 29, 1939

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Mr. Jesse N. Owens, Mayor
City Hall
Jefferson City, Missouri

Dear Sir:

We are in receipt of your request for an opinion, dated December 20, 1939, which reads as follows:

"I am attaching hereto an ordinance which the City Council of Jefferson City is contemplating passing. It provides for the calling of an election to authorize the city to issue bonds in the amount of $200,000 for the purpose of constructing a municipal office building.

"The contemplated building may house some of the municipal offices. About five per cent of the space in the building will be used for municipal purposes. The remainder of the building will be constructed not as an auditorium or armory, but as an office building, to house mainly, it is hoped, departments of state government. No revenue will be derived for the city from the occupants of the building.

"It cannot be contemplated this building will be used entirely for municipal purposes. It is true, however, it will be designated as a 'municipal office building', and will be so known to the public. The public may know when bonds for the construction are considered that in the

strictest sense the building will not be used exclusively for municipal purposes, and that no revenue will be derived from the use of this building.

"This is an unusual case, but inasmuch as great benefit may be derived by the community at large from the erection of the building, through the pay roll and wages paid to the workers in the building, it is thought that citizens generally will derive indirect benefits.

"The question has arisen as to whether an election can be legally called by a city of the third class for the purpose outlined above. Could bonds so voted be legally sold and collected upon? Could city officers now, or in the future, be guilty of any infraction of the law if this ordinance were passed and the money derived from the sale of the bonds so voted were used to construct a building in conformity with the ordinance but a state agency would be permitted to largely occupy the building, whether rent-free or if rent were collected? Would they be guilty of diversion of the bond money? Would they be guilty of diverting use of the building?

"If it were known to a state department that bonds had been voted and sold for the purpose of constructing a municipal office building but planned for use for such state department, could said state department legally accept from the city the use of said building for its own office use?

"Would the term or name 'municipal office building', used at the time of the bond election, bring such project within the statutes and make the action legal?

"There may be some defects in the ordinance about which inquiry is not made, such as the selection of judges of election, but these matters can be corrected when the above inquiries are answered.

> "We request your opinion on these questions for it is vitally important to the citizens of our city that we know what action their city government may take to further the best interests of the community. We realize this request will require time and research and assure you that for your assistance we will be most grateful."

Your request being in reference to the laws applicable to Jefferson City, is covered by the laws included in Article 4, Chapter 38, R. S. Missouri, 1929, which concerns cities of the third class.

Section 6808 R. S. Missouri, 1929, partially reads as follows:

> "* * * * * The council may also provide for the erection, purchase or renting of a city hall, workhouses, houses of correction, prisons, engine houses and any and all other necessary buildings for the city; and may sell, lease, abolish or otherwise dispose of the same, and may enclose, improve, regulate, purchase or sell all public parks or other public grounds belonging to the city, and may purchase and hold grounds for public parks within the city, or within three miles thereof."

Under the above section, the legislature has seen fit to specifically state that a city of the third class may erect, purchase or rent a city hall or any and all other necessary buildings for the city. This section also specifically states that the city may sell, lease, or otherwise dispose of the buildings.

Section 6834 R. S. Missouri, 1929, reads as follows:

> "The city council is hereby authorized and empowered to provide for the purchase

> of ground, and the erection of city halls, fire stations, assembly halls, memorial halls, convention halls, public library, hospital buildings, equipment and other buildings and the improvement thereof, and for the payment of the same, and also for all necessary work of improvement specified in this article, by the issue of bonds or otherwise, subject, however, to the conditions and limitations herein specified. No city shall be allowed to become indebted in any manner or for any purpose to any amount exceeding in any one year the income and revenue provided for such year, without the assent of two-thirds of the voters of such city, voting at an election to be held for that purpose, nor in any case requiring such assent shall any 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: Provided, that any city 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 payment of the principal thereof within twenty years from the date of contracting and incurring such indebtedness and may provide by ordinance the manner of conducting said election under this section, and ascertaining the result of the same."

Under this section a city of the third class is empowered to issue bonds for city halls, buildings etc., which would include a city hall or a "municipal office building", for the reason that it specifically states "other building."

Section 3, Article 10, of the Missouri State Constitution, reads as follows:

> "Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws."

This section of the Constitution is one of the sections upon which the facts stated in your request will be based as to whether or not this section will be violated by the erection, by bond issue, of a "municipal office building," which may be used partially by a state department.

Under Section 6808 and Section 6834, supra, there is no question but what the City of Jefferson City, may build, by bond issue, a "municipal office building." There is no question but that building an office building, or which is described by an ordinance as a "municipal office building" is for a public purpose, omitting or including the fact that the "municipal office building" may later contain a state office. It is not a misuse of public money in erecting a "municipal office building." It is also true that if the "municipal office building" should contain a state office, that office would be for a public purpose, and not for private gain to any corporation, company, partnership or individual.

In the case of Halbruegger v. City of St. Louis, et al, 262 S. W. 379, a tax-paying citizen of the city of St. Louis sought to enjoin the city and its officers from issuing bonds voted to procure money to acquire a site for erecting a civic building to be known as the "municipal auditorium and community center building." In that case the court said, at page 382:

> "There seems to be no dissent from the rule that the erection of a city hall is within corporate purposes of municipalities, and that a room for public assemblages may be included therein, and paid for with public money. Town of Beaver Dam v. Frings, 17 Wis. 398, cited in State ex rel Jordon v. Haynes, supra; Torrent v. Muskegon, 47 Mich. 115, 10 N. W. 132, 41 Am. Rep. 715;

Hightower v. Raleigh, 150 N. C. 569, 65 S. E. 279; Ross v. Long Branch, 73 N. J. Law, 292, 63 Atl. 609; Wheelock v. City of Lowell, 196 Mass. loc. cit. 224, 81 N. E. 977, 124 Am. St. Rep. 54; Denver v. Hallett, 34 Colo. loc. cit. 405 et seq., 83 Pac. 1066; and cases cited; White v. Town of Stamford, 37 Conn. 586; Greeley v. People, 60 Ill. loc. cit. 22; Bates v. Bassett, 60 Vt. 534, 15 Atl. 200, 1 L. R. A. 166; Callam v. Saginaw, 50 Mich. loc. cit. 10, 14 N. W. 677; Parker v. Concord, 71 N. H. loc. cit. 471, 52 Atl. 1095.

"In Wheelock v. City of Lowell, 196 Mass. 220, 81 N. E. 977, 124 Am. St. Rep. 543, 12 Ann. Cas. 1109, it was proposed to erect a public hall to replace a building which had been destroyed by fire, and which had been theretofore used by various sorts of public assemblages. The city had another building in which its officers and boards were adequately housed. The suit was to restrain the expenditure. The court said, in part:

"'The reported facts show a substantial use of Huntington Hall for political rallies, conventions, and other public meetings of citizens, although, from time to time, it has been rented for purposes of amusement and instruction. That the building has been also let for private uses, when not required by the public needs, does not affect the general legal purpose. * * * It is hard to overestimate the historical significance * * * of the public meetings held in all the towns of Massachusetts before, and during the Revolution. No small part of the capacity for honest and efficient local government, manifested by the people of this commonwealth, has been due to the training of citizens in the forum of the town meeting. * * * The practical in-

> struction of the citizen in affairs of government, through the instrumentality of public meetings, and face to face discussions, may be regarded quite as important as their amusement, edification, or assumed temporal advancement in ways heretofore expressly authorized by statute, and held constitutional * * * ."
>
> "'A commodious and convenient hall in which the citizens are to exercise their right of assembling, and of considering and discussing public affairs, is therefore an object for which the defendant city may legally spend money.' * * *"

The fact that the proposed building is called a "municipal office building" and not a city hall, does not prevent section 6808, supra, from covering such a procedure, for the reason that that section specifically stated "other buildings."

In the case of Halbruegger v. City of St. Louis et al, supra, on page 383, the court said:

> "If a public hall legally may be erected by a municipality out of public funds at all, it is because it serves, or may serve, a public use within the meaning of the Constitution. It is settled law, generally, in Missouri and elsewhere, that it does serve such a use. If so, it is because it serves that use, and not because it is nailed to the top of or beside a number of rooms designated 'city offices,' or the like. The right of the people 'peacably to assemble for their common good' is thought of sufficient importance to justify its protection, by constitutional provision, from all interference. The duty to assemble for the purpose of securing and disseminating information, and interchanging views on public questions is becoming increasingly obligatory. The

increase of opportunities for assembling for the better diffusion of 'light and knowledge,' on all subjects which will advance the cause of education and morals among the people of a community, will aid in contributing to the general welfare the progressive influences of moral and cultural forces, which are essential to the advancement of the race. The policy of our people, as evidenced by the Constitution and the Charter of St. Louis and other cities, is to retain, in themselves, the power to initiate legislation and to veto acts of the lawmaking body. By this means the people of each community become a constituent part of a great legislative body which acts for the whole state, and, on occasion, become the municipal Legislature. Public discussion of such questions fairly calls for a place where it can be held, and such public discussion is a reasonable means whereby the electorate can aid itself, or be aided, in arriving at the conclusions it has become its duty to form, in furtherance of the public good, under an adopted policy. In many matters of local, and even more general concern the need of the citizens of a municipality for a convenient and adequate place of assemblage is too obvious to require particularization. The arts and sciences require places for display of their works. The cause of education can be served in many ways by such a structure. When all these things are considered, we find no difficulty in holding that, under the generally approved rule stated above, the court cannot say the purpose, evidenced by the proposal in question, is not a public one within the meaning of the principle formulated in the quoted provision of the Constitution.

"The decision in Brooks v. Town of Brooklyn, 146 Iowa, 136, 124 N. W. 868, 26 L. R. A. (N.S.) 425, pertained to the proposed erection

> of a municipal theater. It obviously deals with a structure quite unlike that contemplated by the city of St. Louis. What the court said to the effect that, by reason of the fact that municipal government in Iowa was representative, and voting was by ballot, cities in that state were not in need of a public assembly hall like those justifiable where local government was conducted by 'town meetings,' perhaps puts too much stress upon the method of voting, and too little upon the public advantage and need of discussion of public questions. In New England, itself, another view is taken of the effect of the substitution of representative municipal government, and voting by ballot on the public right and necessity to erect and maintain a hall for public assemblages. Wheelock v. City of Lowell, 196 Mass. loc, cit. 227, 81 N. E. 977, 124 Am. St. Rep. 543, 12 Ann. Cas. 1109."

In view of the above citations it is not necessary that the bonds read exactly as set out in section 6808, supra, but may mean any other like office which may be designated "city offices", or the like.

There is no question but that a state office situated in a city-owned office building would also be considered the same as a public purpose, although it serves people other than those who reside in Jefferson City, yet, it serves the residence and citizens of Jefferson City, and would not be a violation of Section 3, Article 10, of the Missouri State Constitution, supra.

Under Section 6808, supra, the city may lease, but not state the amount required to be placed in the lease. Even if no consideration was given for the lease and space in the municipal office building by the city to the state the service given by the state is for a public service and serves the city as well as the state. In some cases the public service is not of benefit to all of the taxpayers in the community; nevertheless, if it is a public service for the public's need, and for a public purpose it is not a violation of Section

47, Article 4, of the Constitution of Missouri, which reads as follows:

> "The General Assembly shall have no power to authorize any county, city, town or township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, to lend its credit, or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company: * * * "

This was upheld in the case of Jasper County Farm Bureau v. Jasper County, 286 S. W. 2d 381, which was a case brought by the Jasper County Farm Bureau against Jasper County to recover from the county the unpaid balance of an appropriation made by the county court for the use of the Jasper County Farm Bureau. In this case Jasper County claimed that the appropriation was in conflict with the provisions of Section 46, of Article 4, and of Section 47, of Article 4, and of Section 6 of Article 9, of the Constitution of Missouri, and therefore unconstitutional and void. The whole case depended mostly as to whether the purpose was a public purpose or an appropriation for a private individual, corporation or company. The court in that case, at page 383 said:

> "It is also true that many objects for which money may be appropriated are so clearly public in their nature that there could not well be any difference of opinion on the subject, such, for example, as public charities, and appropriations provided for the care of the indigent, destitute, and insane, either in institutions exclusively under state control or those maintained by corporations for purely charitable purposes. In 1894 this court, in banc, in the case of State ex rel. City of St. Louis v.

Seibert, 123 Mo. 424, 24 S. W. 750, 27 S. W. 624, held that an appropriation for the support of the indigent insane in the asylum of the city of St. Louis who belonged to the state outside of the city was not unconstitutional even though such insane asylum was a private institution of such city and was not one of the state eleemosynary institutions. So also public funds appropriated for the state and county system of schools. Likewise the expending of public funds in the construction of necessary public buildings and the construction and maintenance of public roads. On the other hand, there are many other enterprises helpful to the public in the community in which they are located, and that contribute very largely to the development and progress of the state, that are so purely private in their nature as not to admit of any doubt about the matter. Such, for example, are manufacturing or commercial enterprises established and maintained by private individuals or corporations for purely private gain.

"There are also many purposes for which public money may be appropriated from the use of which some persons derive more benefit than others, but this circumstance does not detract from the fact that their chief function is to administer to the public good, although the enjoyment and advantages derived from their maintenance are not distributed equally, even between members of the public who are situated alike or in the same class. If it were essential to the establishment or existence of an enterprise to be set up and sustained by public aid that all members of the public or all members of any class should derive from it the same or like benefits or advantages, then it would be entirely impossible to describe a public enterprise in aid of which public funds might be set apart."

Under the above holding the court held that it was for a public purpose, although some persons derived more benefit than the others out of the farm bureau.

The theory that it be necessary that all should not be benefited out of taxes assessed for public service for a public purpose was also upheld in the case of Dysart v. City of St. Louis, 11 S. W. 2d 1045, which was a suit brought by a resident and taxpayer of the City of St. Louis to restrain the City of St. Louis and its officers from delivering certain bonds for the improvement and development of land for an airport. In this case the court, at page 1047 said:

> "'"In the very nature of things, the vast majority of the inhabitants of the city, a 99 per cent. majority, cannot now and never can, reap any benefit from the existence of an airport. * * * "

Also, at page 1049, the court said:

> "'The point is suggested, but not pressed, that the power to establish and maintain an airport is not within those granted the City of St. Louis by its charter. While there is no specific reference to an airport in the charter, there can be no doubt but that the power in question is expressly conferred by the broad all-comprehensive language employed in the granting of powers, when construed conformably to the rule of construction which the charter itself provides. St. Louis Charter, art. 1, sec. 1, paragraphs 8,15, 32, 33 and 35; art. 1, sec. 2. See, also, St. Louis v. Baskowitz, 273 Mo. 543, 201 S. W. 870; Halbruegger v. City of St. Louis, 302 Mo. 573, 262 S. W. 379.'"

In this case the court held that although the charter did not provide for establishing and maintaining an airport under the rules of construction, it was for a public purpose and in accordance with the request

at hand. Section 6808, supra, does not specifically mention "municipal office building", it is to be considered as "other buildings" set out in said section.

As said before the ordinance attached to your request calling for the bond election describes the purpose of the bonds as being voted for to be used in the building of a "municipal office building." There is nothing in the ordinance pertaining to any other use, except a "municipal office building" although your request states "it cannot be contemplated that this building will be used entirely for municipal purposes. It is true, however, it will be designated as a 'municipal office building', and will be so known to the public. The public may know when bonds for the construction are considered that in the strictest sense the building will not be used exclusively for municipal purposes, and that no revenue will be derived from the use of this building." Since nothing is said in the ordinance calling the bond election, the secret or other arrangements, outisde of the record are not a part of the election and the proceeding is assumed to be a legal proceeding. This theory was upheld in Halbruegger v. City of St. Louis, 262 S. W. 379, supra, at page 384, where the court said:

> "It is urged that there is an intent to use the proposed structure, in some instances, for purposes not strictly public, in the proper sense. A secret intent of certain individuals, if such an intent exists, cannot be invoked to render illegal a purpose which in itself is legal. It is not to be assumed that a building adapted to public purposes will be used for others which are of such a character as to be unlawful. Ross v. v. Long Branch, 73 N. J. Law, loc. cit. 294, 63 Atl. 609. In case any illegal use of the building is attempted, the courts will be open for proper proceedings to prevent it. Wheelock v. City of Lowell, supra."

For the conclusion in that case the court further said:

> "It may be added that the board of aldermen, in passing the bond ordinance, and the people (who made the charter), in approving the loan by a decided majority, have construed the charter in accordance with the conclusion we have reached, which is that the purpose is public, and the city has due authority in the premises. This disposes of the questions presented. The judgment is affirmed."

The legislature gave its views of a public service or a public purpose when it enacted section 6808, supra, and said:

> "* * * and may sell, lease, abolish or otherwise dispose of the same. * * * "

In the case of State v. Smith, 82 S. W. 2d 37, which was a mandamus by the City of Excelsior Springs, Missouri v. Forrest Smith, State Auditor to compel the auditor to register certain bonds, the court, at page 40 said:

> "Furthermore, the law authorizing the improvement is a determination by the Legislature that the control, equipment, and management of mineral springs and wells, as provided therein, is for a public purpose. The view of the Legislature should be given consideration. Halbruegger v. City of St. Louis, supra."

The proposed municipal office building, as described in the request is for the purpose of providing space for city offices and for the purpose of offering space to state offices, in order that certain state offices shall remain in Jefferson City as a benefit to the City of Jefferson City.

According to your request there has been no definite arrangement made with any state office or department that may allow space in the building without compensation. Your request states that it is possible that a state office may be allowed to use space in the municipal office building, and that the city would receive no revenue from them. This fact does not prevent the use of the building for the public purpose. This theory was upheld in the case of State v. Hackmann, 240 S. W. 135, which was a mandamus proceeding which compelled the State Auditor, George E. Hackman to register certain bonds of the City of Boonville, a city of the third class for the improving of a street which was an appropriation to a toll bridge built by a private corporation. The court in that case held, at page 137, as follows:

> "The purpose of the bond issue under consideration is in no wise similar to the bond issues and loans of public credit at which the above sections were leveled. It is true the private corporation owning and operating the proposed toll bridge will be unable to profit by its investment therein unless approaches to such bridge are built, and to that extent the bond issue is of benefit to such corporation. The great purpose of the construction of the bridge is for the public benefit--to facilitate public travel over the public highways. The right to collect toll charges is a mere incident. In order to have such bridge built, it is necessary, either, that bonds be issued by the proper political subdivisions to pay for its construction and that sufficient taxes be levied thereafter to provide a sinking fund for the retirement of the bonds, to pay interest thereon and to care for its current maintenance, or that private interests furnish the means therefor and be permitted to make toll or other charges for its use sufficient to pay a reasonable return on the investment, to keep it in proper repair and to make provision against inevitable depreciation. The fact that the private corporation own-

ing the bridge will incidentally be benefited by the improvement is no more reason for denying the authority of the relator to issue such bonds than would the fact that the owner of a lot abutting any street improved by public money profits similarly by such improvement. In either case the benefit to the general public renders insignificant the incidental benefits accruing to the private interests.

"While in one sense a bridge and its approaches are one structure, yet physically and for many purposes they are entirely different things. This distinction has been recognized in the case of St. Louis v. Terminal Railroad Association, 211 Mo. 364, loc. cit. 386, 109 S. W. 641. True, the improvement of Fifth street is solely for the purpose of providing an approach to the proposed bridge and, when constructed, will be used almost exclusively for the purpose of going upon or leaving said bridge. Nevertheless said street throughout its entire length and up to its connection with the bridge will necessarily remain a public street and the bridge company will have no control over it whatever. No funds secured by the bond issue will be loaned to the bridge company or given in aid of the construction of the bridge. We conclude, therefore, that the contention of respondent that the issuance of such bonds is violative of said constitutional provisions must be disallowed."

I am presuming you intend to offer space in the municipal office building to the Unemployment Compensation Commission. Under section 6808, supra, a city

of the third class is empowered to lease its buildings without a limitation as to the amount. It would be advisable if a lease is made that a dollar consideration be shown in the lease, which I believe would be satisfactory to the Commission and the Federal Social Security Board, as set out under Section 4a, Laws of Missouri 1939, page 926, and which reads as follows:

> "The office of the Unemployment Compensation Commission shall be maintained in the City of Jefferson, provided, that within a reasonable time after the passage of this Act there shall be satisfactory arrangements made for the housing of the Commission at a location in said City and in a modern fireproof building appropriate for that purpose, and at a rental to be paid by the Commission, all satisfactory to the Commission and the Federal Social Security Board."

CONCLUSION

In view of the above authorities, it is the opinion of this department that an election can be legally called by a city of the third class for the issuance of bonds for the erection of a "municipal office building." It is further the opinion of this department that in view of Section 6808 and 6834 R. S. Missouri, 1929, that bonds voted for a municipal office building could be legally sold and collected upon.

It is the further opinion of this department that the city officers now, or in the future, would not be guilty of any infraction of the law if this ordinance was passed and the money derived from the sale of the bonds so voted were used to construct a building in conformity with the ordinance and a state agency would

be permitted to largely occupy the building whether rented free or if rent were collected.

It is also the further opinion of this department that the city officers would not be guilty of diversion of the bond/money nor of diverting the use of the building where part of the building is occupied by city offices.

It is further the opinion of this department that the Unemployment Compensation Commission knowing that bonds had been voted and sold for the purpose of constructing a municipal office building but planned for the use of part of the building by the state department, the Unemployment Compensation Commission under section 4a, Laws of Missouri, 1939, page 926, could legally accept from the city the use of part of said building for its offices.

It is further the opinion of this department that the term or name "municipal office building" used at the time of the bond election brings such project within the statutes and makes the action legal.

However, from a study of the authorities, as heretofore set forth in this opinion, one is driven to the conclusion that it is always a question of fact as to whether or not a municipal building is used or not used within the purview of the statute. Each and every case is ruled on by the higher courts upon stated facts before them at the time, instead of by any hard and fast rule, and a history of the cases shows that the courts are continually becoming more liberal in these matters.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

HARRY H. KAY
(Acting) Attorney General

WJB:RW