

COUNTIES: No priority with respect to interest payments.

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May 29, 1934.



Hon. Edward D. Summers,
Prosecuting Attorney,
Crawford County,
Steelville, Missouri.

Dear Sir:

This department is in receipt of your letter of March 15, 1934 requesting the opinion of this department as to the following state of facts:

"Can a county apply money collected during the year 1933 to the payment of the interest and principal payment on a bond issue payment due at the end of the year 1932? This county defaulted in its payment on its bond issue for the year 1932 because of the failure of the bank, and it now has money on hand for the payment of the interest and principal payment of one year, and we desire to know whether to pay the payment for 1933 or 1932."

Section 2895, R.S. Mo. 1929 provides:

"Any county, city, village, town, township, parts of townships or school district, issuing its bonds for the purpose aforesaid, shall, at the time of issuing the same, provide in express manner provided by law for the levy and collection of an annual tax sufficient to pay the annual interest on such funding bonds as it falls due, and a sufficient sinking fund for the payment of the principal of such bonds when they become due."

It will be noticed that there is nothing said in the law about any one year's taxes being segregated and set apart for the service of a particular year's maturity and interest, and this law has never thus been interpreted by the courts of this state.

The general rule with respect to disbursement of county funds is stated in 15 Corpus Juris, page 586:

"In the absence of statutory provision on the subject, it would seem to be no doubt that county boards as the fiscal agents of their counties, may direct the disbursement of county revenues."

In the case of Aetna Casualty & Surety Co. v. Board of Supervisors, (Supreme Court of Appeals of Virginia), 168 S.E. 617, the court said (l.c. 634):

"If a treasurer, whether he has succeeded himself or not, has in his hands money belonging to a particular fund, it is his duty to pay a warrant drawn upon that fund when it is presented to him, though it may have been drawn prior to the beginning of that term of office. This is true, though the money in his hands belonging to that fund may have come from revenue accrued during his current term."

Judge Ragland, in the recent case of State v. Grand River Drainage District, decided by the Supreme Court of Missouri, in Bane in 1932, 49 S.W. (2d) 121, had before him a case involving drainage district bonds. The Court said:

"It is also within the contemplation of the statute (article 1, Chap. 64, Rev. St. 1929) as shown by various and sundry of its provisions, that taxes levied by a drainage district may become delinquent and that because of such delinquency bonds issued by it may not be paid at their maturity. Yet the statute is wholly silent as to preferences or priorities as between the holders of matured bonds, when the funds at a given time are not sufficient to pay all. Nor does it contain a requirement, or even an intimation, that none of such bondholders shall be paid until funds are available to pay all. On the contrary, by the clearest implications it places upon the board of supervisors the imperative duty to pay matured and maturing bonds and interest installments as long and

as often as funds are available for that purpose."

CONCLUSION

By reason of Sec. 2895, R.S. Mo. 1929 requiring the county court to levy a tax annually "sufficient" to pay the bonds and the interest thereon, the court must be presumed to have included in its levy for the year 1933 a sufficient sum to take care of the unpaid interest for the year 1932. The statute is silent as to priorities, and in view of Judge Ragland's decision in the case of State v. Grand River Drainage District, we conclude that interest installments for the years 1932 and 1933 must be paid as long and as often as funds are available for that purpose.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General

APPROVED:

ROY McKITTRICK,
Attorney General

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