

COUNTIES - County court judges cannot borrow money to retire bond issue without assent of 2/3 of the voters.

October 18, 1938



Honorable W. L. Welsh
Presiding Judge of County Court
Reynolds County
Centerville, Missouri

Dear Sir:

We have your request for an opinion, which in part is as follows:

"There is a move on foot for the calling of a special election in Reynolds County to vote on a proposition to bond the county for the purpose of providing funds for the payment of certain judgment indebtedness, construction of roads and bridges and for the building of an addition to the court house. The last two items being in cooperation with the WPA for which we have an approved county wide road project for \$362,808.00, \$297,188.00 being allotted by the WPA and \$65,620.00 representing the County's share, of which \$51,000.00 is to be furnished in equipment rental, leaving about \$15,000.00 to be raised for materials.

"We have \$5,600.00 in road bonds of the 1918 issue, together with about \$200.00 in interest, and \$1,350.00 in interest of the 1932 judgment funding bond issue defaulting, and in order to keep the defaulting bonds and interest from reflecting in the new bond issue, the county court desires to borrow money against the sinking fund in order to take up the bonds and interest, for which a sufficient levy has been ordered and extended upon the tax

books for 1938 and the only thing involving the payment of the bonds and interest is the collection of the taxes for the year 1938, therefore, we desire your opinion on the question, 'may we borrow money from a bank or private source against the sinking fund for the purpose of retiring the defaulting bonds and interest, and issue to the bank or money lender, warrants, script or vouchers upon the sinking fund of the county in security of said loan, said warrants, script or vouchers to be paid out of said sinking fund in lieu of the bonds and interest coupons retired as aforesaid'. "

As we understand the facts from your letter, the county does not have enough current revenue or surplus to retire the 1918 road bonds and the judgment and interest in defaulting bond cases, and that in order to pay off this indebtedness the county court wishes to borrow money for that purpose.

I call your attention to Article X, Section 12 of the Constitution of Missouri, which provides in part as follows:

"No county ** 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, *** "

It is apparent from your request that the above constitutional provision would prohibit a county court from incurring an indebtedness, such as a loan, for the purposes outlined in your request for an opinion. The borrowing of these funds from a bank or other source would be incurring an indebtedness of the county in excess of the current revenue, and would require a two-thirds vote of the people to do so.

It is, therefore, the opinion of this office that the county court is without authority to borrow money for the purpose of retiring bonds and judgment with interest thereon.

Respectfully submitted

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:
