

BRIDGE BONDS: County courts may not appropriate surplus
COUNTIES PAYING FOR: taxes to pay bonds issued for payment of
toll bridges or operation of such bridges.

✓ 1/12
January 2, 1942

Mr. W. L. Mulvania
Prosecuting Attorney
Atchison County
Rockport, Missouri



Dear Sir:

Your opinion request of December 10th has been received and contents carefully noted. Your request, after deleting the caption, is as follows:

"The County of Atchison has constructed and now owns and operates a toll bridge across the Missouri River, said bridge being known as the Brownville Bridge. Because of traffic conditions, it now appears to the County Court of this County that there will not be sufficient revenue derived from the tolls collected to take care of the revenue bonds and the interest thereon as the same becomes due and also pay the cost of maintaining, repairing and operating said bridge.

"I am herewith enclosing a letter which was written to Mr. Carl M. Hunter, the presiding judge of the County Court of this county, by Mr. Frank W. Bowen, Vice-President of Stifel, Nicolaus & Co., Inc. of Chicago, Illinois who represent the stockholders. You will note various quotations from the Court's order in the County Court of Atchison County which deal with the question involved. You will also note a quotation of the legal conclusions reached by Charles & Trauernicht, attorneys for the above named company. I wish to call your attention specifically to the following quotation from their

opinion: 'Our attention has also been directed to Section 22 of the County Court's order under which the bonds were issued. We construe the said section to mean that the tax revenue of the County, to the extent needed for the ordinary functioning of the County government, may not be drawn on to meet the obligations of the bridge, but it is our opinion that any surplus funds of the County may be applied and, in fact, are required to be so applied by the covenant contained in Section 14 of said Order.'

"In advising with the County Court on this matter, as prosecuting attorney of this county, I have respectfully taken issue with the conclusions reached by these attorneys, but at the suggestion of the County Court I am submitting the proposition to you as to whether or not any surplus funds that may be in the county treasury, which may be in the Road And Bridge Fund or in any other fund which is derived from taxation may be applied to the "Toll Bridge Revenue Bond Interest and Sinking Fund" or to the cost of maintaining, repairing and operating said bridge.

"My opinion that such funds of the County could not be so applied was based upon Section Three of the Act relating to the acquisition, construction, ownership, operation and maintenance of Toll Bridges by counties or political or civil subdivisions of a County of the State as found in the Laws of Missouri. Extra Session 1933-34, said Act having been amended by an Act of 1941 at page 525. I find the following in Section Three as found on page 116 of the Session Acts, Extra Session 1933-34: "... and any public body

which shall issue bonds under the provisions of this act is hereby authorized and required to make all necessary provisions for the payment of principal and interest on any such bonds by the fixing, collecting, segregating and allocating of the tolls and other revenues received from the operation of said bridge or bridges. Such public agencies enumerated above may execute liens in proper form, pledging the revenue derived from the toll of such toll bridges or parts thereof which are constructed or acquired with funds borrowed as aforesaid, to the retirement of such bonds; provided however, that no revenue bonds or any liens securing such bonds shall be repaid in whole or in part from any funds arising from taxation, nor shall any such bonds or liens given under authority of this act constitute a lien on any credit of such agency, and provided further, that at such time when all the monies borrowed as aforesaid shall have been repaid, together with interest and charges thereon, no further toll shall be charged for the use of such bridges by the travelling public.'

"I failed to see how the bond agreement or the Court's order as set forth in the letter from Mr. Bowen could reasonably be construed to mean what Charles & Trauernicht says it means, but even assuming that it does say that, it seems to me that such an agreement or such an order, in the face of the statute above mentioned, would be absolutely void and therefore the Court would have no right to apply any surplus funds derived from taxation to the payment of those revenue bonds or to the maintenance and operation from money derived from taxation, even though it may not pay any part of the bonds or the interest thereon, in the light of the sections set out in the letter of Mr. Bowen and in the light of the statute above quoted.

"Thanking you for your opinion in this matter, I remain."

There seem to be but two questions of law presented in this request. One of these is, whether a county court has the right to exceed the authority given it by statute and pay principal and interest of bonds issued for the construction of a toll bridge, with money derived from taxation of property, when the income from the bridge itself is insufficient to take care of such indebtedness.

The other question is, whether or not the county courts would be authorized to pay the cost of maintenance and operation from monies derived from taxation, even though the bonds and the interest thereon are not paid therewith.

The County Courts in the State of Missouri were created by Article Six, Section Thirty-six of the Constitution of the State of Missouri, which section reads as follows:

"Section 36. - County Courts - In each county there shall be a county court, which shall be a court of record and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three in number, of whom the probate judge may be one, as may be provided by law."

These Courts are courts of limited and inferior jurisdiction. See St. Louis County vs. Menke, 92 S. W. 2nd 818, Ex Parte McLaughlin, 105 S. W. 2nd 1020, Missouri Digest "Courts" key number 33. They are of statutory origin and have no common law or equitable jurisdiction. State ex rel. v. Johnson, 138 Mo. A. 306, 121 S. W. 780; State ex rel. v. Jackson, 299 Mo. A. 842, 84 S. W. 2nd 988. Therefore, any power which they have, of a necessity, must be conferred upon them by the legislature and they

January 2, 1942

must proceed in the manner set out by statute as stated in State ex rel. Kelley v. Trimble, 247 S. W. 187, 297 Mo. 104, 247 S. W. 1009, which says:

"Local courts, those of limited jurisdiction, and inferior courts, not proceeding according to the court of the common law, are confined strictly to the authority given, and the records of such courts must show the existence of all facts necessary to give jurisdiction, both of the subject matter and the parties to the action."

The statute which gives county courts the right to issue the type of bonds in question is Section 8549, R. S. Mo. 1939, a part of which was set out in your letter cited above. This section is a special statute, in a way, which deals with only one power of the county courts which is that of constructing toll bridges and providing ways and means of financing such undertakings. However, this section also has the following exception:

" --- Provided however, that no revenue bonds or any liens securing such bonds shall be repaid in whole or in part from any funds arising from taxation."

In other words, the statute not only refrains from giving the courts power to divert tax funds, but specifically restrains the various county courts from diverting such funds for the purposes aforesaid.

Attached to your letter was a letter from Stifel, Nicolaus & Co., which called attention to Section 14 of the County Court's order which was as follows: "The County of Atchison further covenants with each of the purchasers and owners of any of said bonds, at any time

outstanding, that if the revenue of the Bridge should at any time prove insufficient to pay the cost of operating, maintaining and repairing the Bridge, in addition to maintaining the said 'Toll Bridge Revenue Bond Interest and Sinking Fund,' then the county to the extent of such deficiency, will pay such operation maintainance and repairing costs from moneys received from sources other than the operation of the Bridge.' As can be seen from the authorities and statutes cited above, the County Court of Atchison County has attempted to do what the statute plainly provides that it cannot do. They have undoubtedly exceeded the authority granted them by the legislature and in view of the fact that they have no common law powers, it is the opinion of this department that any agreement whereby the County Court attempts to pay the Bridge bonds and interest on such bonds from any funds derived from taxation is void.

In the letter attached to your request, we notice an item from Charles & Trauernicht, which is as follows: "Our attention has also been directed to Section 22 of the Court Court order under which the bonds were issued. We construe the said section to mean that tax revenues of the county to the extent needed for the ordinary functioning of the County Government may not be drawn upon to meet the obligations of the Bridge, but it is our opinion that any surplus funds of the County may be so applied, and, in fact, are required to be so applied, by the covenant contained in Section 14 of said order." There were no authorities cited to sustain this view, and we have been unable to find any law to substantiate this position.

Now as to the second question, to wit, Whether the County would be authorized in paying the cost of maintaining and operating the Bridge with monies derived from taxation. It seems that the intention of the legislature, when it enacted Section 8548, R. S. Mo. 1939, was very clear. It empowered a county to construct a toll bridge and to obtain money for that purpose. However, as can be seen from a careful reading of the section of the statutes aforesaid, the General Assembly did not intend for bridges constructed

January 2, 1942

under this statute, to be a constant liability and drain on the funds obtained from taxation in the county. This department can see no reason why, if the bonds and interest cannot be paid from the taxation funds, that the maintenance and operation of the Bridge should be.

All persons dealing with a county court are presumed to have knowledge and notice of the limitation of its powers, and therefore the purchasers of the bridge bonds bought them with a knowledge of the limitation of the counties' authority to pay the bonds in any way other than that prescribed by law.

"The County Court, in making contracts, is the agent of the county, with express, limited and defined powers, and anyone contracting with it must take notice of its authority." *Bauer v. Franklin County*, 51 Mo. 205; *Sturgeon v. Hampton*, 88 Mo. 203.

CONCLUSION

In view of the authorities cited above, it is the opinion of this department that no money derived from taxation in any county can be used for the purpose of paying toll bridge bonds or the interest on such bonds, or for the purpose of operating, repairing or maintaining a toll bridge.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General