

TOWNSHIPS:

Townships may anticipate revenue and issue warrants which warrants shall bear interest.

April 24, 1951

4-25-51



Honorable C. Dudley Brandom
Prosecuting Attorney of
Daviness County
Gallatin, Missouri

Dear Sir:

This is in reply to your request for an opinion from this department which request reads as follows:

"Daviness County at the November election voted to revert to township organization form of county government (from county organization form of county government) and the various townships have held elections for their township board members the last part of March. These board members are now qualifying and posting bonds and desiring to start functioning as townships. The following questions have arisen in reference thereto on which we would like to obtain an official opinion of your office:

"Do townships or township boards have the right to anticipate revenue and issue protested warrants for a percentage of their anticipated revenue? If so, what is that percentage?"

Section 65.260, RSMo 1949, relating to the powers of townships is as follows:

"Each township, as a body corporate, shall have power and capacity:

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- "(1) To sue and be sued, in the manner provided by the laws of this state;
- "(2) To purchase and hold real estate within its own limits for the use of its inhabitants, subject to the power of the general assembly;
- "(3) To make such contracts, purchase and hold personal property, and so much thereof as may be necessary to the exercise of its corporate or administrative powers;
- "(4) To make such orders for the disposition, regulation or use of its corporate property as may be conducive to the interest of the inhabitants thereof;
- "(5) To purchase at any public sale, for the use of said townships, any real estate which may be necessary to secure any debt to said township, or the inhabitants thereof, in their corporate capacity, and to dispose of the same."

Section 65.340, RSMo 1949, provides:

"When any claim or account, or any part thereof, shall be allowed by the township board of directors, they shall draw an order upon the township trustee in favor of the claimant for the amount so allowed - said order to be signed by the president of said board, and attested by the township clerk and delivered to said claimant."

Section 65.270, RSMo 1949, provides:

"No township shall possess any corporate powers, except such as are enumerated or granted by this chapter, or shall be especially given by law, or shall be necessary to the exercise of the powers so enumerated or granted."

(Emphasis ours.)

In view of the above statutory provisions it is our opinion that a township board vested with the power to discharge enumerated township functions may anticipate revenue and issue warrants. However, this authority is limited by Section 26(a), Article VI, Missouri Constitution 1945, which provides as follows:

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"No county, city, incorporated town or village, school district or other political corporation or subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this constitution."

In the case of *Hawkins v. Cox*, 334 Mo. 640, the court in discussing this constitutional provision said at l. c. 649:

"The plain meaning of this constitutional provision is that any such municipal corporation may spend or contract to spend (become indebted) 'in any (calendar) year the income and revenue provided for such year', but beyond that it cannot go in creating a debt for any purpose or in any manner, except by consent of two-thirds of the voters. This was so held in *Book v. Earl*, 87 Mo. 246, where the Court said: 'The contracting of a debt in the future by a county in any manner or for any purpose in any one year exceeding the revenue which the tax authorized to be imposed would bring into the treasury for county purposes for such year, unless expressly authorized to do so by the assent of two-thirds of the voters' is prohibited."

In the case of *Watson v. Kerr*, 279 S.W. 692, the court in speaking on the same subject said:

"But in construing the constitutional provision just quoted we have repeatedly held that an indebtedness is not invalid merely because it appears at the end of the year in which it was created that the aggregate indebtedness incurred by the county during that year exceeded the revenue actually collected. If at the time of its creation the indebtedness is within the income which may reasonably be anticipated, it is valid."

You have asked the question whether or not a township board may issue protested warrants. We assume that you are interested in finding out whether the township board may issue warrants which will be protested so as to bear interest.

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Section 408.020, RSMo 1949, provides:

"Creditors shall be allowed to receive interest at the rate of six per cent per annum, when no other rate is agreed upon, for all moneys after they become due and payable, on written contracts, and on accounts after they become due and demand of payment is made; for money recovered for the use of another, and retained without the owner's knowledge of the receipt, and for all other money due or to become due for the forbearance of payment whereof an express promise to pay interest has been made."

To the effect that this section is applicable to township warrants we refer you to the case of Robbins v. Lincoln County Court, 3 Mo. 57, where it was contended that a similar section referred only to individual debtors. In passing on this question the court said:

"* * * But the words of the act are extensive enough to embrace all persons, and bodies, capable of owing money by bond, bill, promissory note, or other instrument in writing. By law the county is able to buy and sell certain things, to contract and be contracted with, and a County Court is by law expressly required to audit and allow all demands against the county, and to draw a warrant on the treasury for the amount allowed; here there is an instrument in writing, which shows money is due, but we are clear that the warrant must be presented at the treasury for payment, and payment refused, before any interest arises; that has been done in this case. * * *"

It is noted that the statutes governing township organizations make no provision for the payment of interest upon township warrants. However, we believe that this omission to so provide is governed by the reasoning of the court found in the case of Isenhour v. Barton County, 190 Mo. 163, at page 177:

"It has already been pointed out that the statutes relating to county warrants make no provision whatever for the payment of interest thereon, but that this court has held that they do bear interest and that the general statute in reference to interest is as applicable to such warrants or the debts they evidence, as to any other character of debts. The Legislature

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evidently intended that such should be the case, and the failure to provide specially for interest was not a mere casus omissus. For ever since 1865 there has been a provision upon the statutes of this State in reference to city warrants, similar to the provisions herein set out as to county warrants and the protesting of the same when there was no money to pay them, except that it was further provided that such warrants so protested should draw legal interest until funds for the payment thereof should be set apart therefor. * * *

We are therefore of the opinion that the legislature intended that the general statute in reference to interest should govern. The general interest statute above quoted contains no provision or regulation as to the demand or the formality of refusal of payment. Therefore a formal protest is not required and the interest starts to run after demand and refusal of payment.

Although a county is prohibited by statute from incurring a principal indebtedness beyond a specified percentage of the anticipated revenue for the current year, there is no similar provision relating to townships. Therefore we are of the opinion that a township may, subject to Section 26(a), Article VI, Missouri Constitution, incur indebtedness up to the full amount of the anticipated revenue. A debt in its generally accepted meaning denotes principal and interest. Therefore it would be difficult without reference to particular circumstances to formulate a general rule as to the percentage of anticipated revenue that warrants may be issued upon, since the interest must be computed to determine the total indebtedness which may be incurred and which is limited by the above quoted constitutional provision.

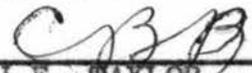
CONCLUSION

Therefore it is the opinion of this department that township organizations may anticipate revenue and issue warrants for necessary expenses subject to the limitation that such debts (principal and interest) incurred shall not exceed the revenue reasonably anticipated for the current year and it is our further opinion that warrants so issued would bear interest under the general interest statute.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
Attorney General