

BONDS: Counties may vote bonds under Sec. 2922, R. S. 1929, to relieve warrants, when reduced to judgments. Warrant holders paying expenses of election does not invalidate bonds. County Court may authorize election without petition.

June 20, 1935.



Hon. G. C. Beckham  
Prosecuting Attorney  
Crawford County  
Steelville, Missouri

Dear Mr. Beckham:

This is to acknowledge receipt of your letter of June 6, 1935, which letter is as follows:

"The County Court of Crawford County is considering calling a special election for the purpose of placing before the voters the proposition of a bond issue for funding the outstanding indebtedness of the County.

"We have approximately \$65,000.00 outstanding warrants for 1931 and 1932. Approximately \$50,000.00 of this has been reduced to judgment. As I understand Sec. 2922 we could issue bonds only for that part that has been reduced to judgment. We would like to 'clean the slate' while at it and vote bonds to take up the entire \$65,000.00. I would like to have your opinion as to whether or not, this could be done.

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"Holders of said judgments have offered to pay the expenses of a special election for this purpose. Would this place any cloud upon the validity of the bonds?"

"Also, proceeding under Sec. 2922, I understand that no petition to the County Court is necessary. Is this correct?"

There are three questions asked in your letter and we shall undertake to answer them in their order as submitted in your letter.

I.

Your first question is whether or not, under Sections 2922 and 2923, R. S. Mo. 1929, your county court is authorized to issue bonds upon a vote of the people to pay outstanding warrants of Crawford County which have not been reduced to judgment.

We herewith set forth Section 2922 for the reason that it provides the method for issuing bonds for funding indebtedness of counties. Said section is as follows:

"County and municipal authorities are hereby authorized to submit to the qualified voters of any county, city or village, at any special election held for that purpose, or at any primary or general election held under the laws of this state, a proposition whether any judgment indebtedness of such county or municipality shall be funded; and if two-thirds or more of the qualified voters of such county or municipality voting on the proposition shall assent thereto, such county or municipality shall be authorized to borrow upon its credit the amount of money authorized to be borrowed, and to issue, negotiate, and sell coupon funding bonds of such county or municipality, maturing serially, in not more than twenty years after their date in annual amounts as nearly equal as may be practicable, payable to bearer, with interest payable semi-annually, at a rate not exceeding six per centum per annum; and from the proceeds of the sale or sales thereof to satisfy and discharge such judgment indebtedness. The assent of two-thirds or more of the said qualified voters to such proposition and the issuance of

such funding bonds under this section shall be deemed and held by all courts in this state to be, to all intents and purposes, the incurring of a new indebtedness; and thereafter no question shall ever be raised in any court as to the validity of such indebtedness, except questions of constitutional limitation of indebtedness. And such funding bonds shall not be exchanged or delivered in payment of such judgment indebtedness nor any part thereof. The provisions of this section shall not be deemed to be repugnant to nor inconsistent with section 2892, Art. 4. Chap. 15, R. S. 1929; but the power and authority hereby conferred shall be deemed to be cumulative thereof."

It can readily be seen that only judgment indebtedness of such county or municipality shall be funded. Therefore, only that part of your warrant indebtedness which has been reduced to judgments, to-wit, \$50,000.00, may be funded in the manner provided by the above statutes. When a judgment has been rendered for indebtedness against a county, such judgment is a conclusive adjudication that the debt is valid and is not open to collateral attack in a suit on bonds issued to refund such judgment debt.

The statute very properly provides that the bonds shall be issued only for judgment indebtedness and thereby does not subject bonds legally issued to collateral attack by reason of some infirmity in a warrant, and the county, and everybody else, is foreclosed from attacking the validity of the warrant, if reduced to judgment.

In the case of State ex rel. Clark County v. Hackmann, State Auditor, 218 S. W. 318, l. c. 320, the Supreme Court of this State said:

"By failure to collect taxes, and other reasons, there are many valid outstanding county warrants in the several

counties of the state--nearly \$2,000,000 according to reports. By valid outstanding warrants, we mean warrants issued for the current expenses of the year, and warrants which, when issued, were within the anticipated revenue of the year. By the issuance of the bonds involved here, Clark County is seeking to discharge judgments upon warrants of this character. This we say because the validity of the warrants is vouched for by court judgments. If Clark County is successful, the other counties, to use a homely expression, 'Will follow suit.'

## II.

Your second question is whether or not, if the holders of the judgments based on the warrants, paid the expenses of the special election held for that purpose, would this place any cloud upon the validity of the bonds?

It is our opinion that if someone other than the county paid the expenses of the bond election that that in itself would not render the bonds, which might be voted at said election, invalid. And the fact that the holders of judgments made arrangements with the county court to finance the election would not affect the validity of the bonds.

## III.

Your third question is whether a petition is necessary to authorize your county to submit the bond question to the vote of the people.

Replying thereto will say that Section 2922, supra, does not provide for a petition but states that the "county and municipal authorities are hereby authorized to submit to

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the qualified voters of any county, city or village, at any special election held for that purpose, etc." And said section does not provide that a petition shall be the basis of the authority of the county court to order said election. It is our opinion that the county court may order said election on its own initiative and without a petition.

We might add that the Supreme Court in the cases of State ex rel. Clark County v. Hackmann, State Auditor, 218 S. W. 318, 280 Mo. 686, and State ex rel. City of Jefferson v. Hackmann, 229 S. W. 1082, 287 Mo. 156, have discussed at great length the necessary steps to be taken in the bond election of this kind.

We shall be glad to serve you at some future time.

Very truly yours,

COVELL R. HEWITT  
Assistant Attorney-General.

APPROVED:

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JOHN W. HOFFMAN, Jr.  
(Acting) Attorney-General.

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