

COUNTY COURTS: Taxes levied to pay off the indebtedness incurred to build a courthouse cannot be used for any other purpose.

February 20, 1942

2-25

Mr. Noah Bell
Presiding Judge
Oregon County Court
Alton, Missouri



Dear Sir:

We acknowledge receipt of your letter requesting an opinion, which reads as follows:

"Q 1. We have our New Court House completed and moved back into the building and in our old Court House the A. F. & A. M. had the 3rd. floor leased for a period of 99 years and in building the old building the Lodge paid almost \$1000.00 in building it and thereby got the lease and all the Lodges consisting of the I.O.O.F., Rebeckah and Eastern Star and M. W. of A. all met.

"In the New Building we have two rooms designated as Community or Recreation rooms and the A. F. & A. M. wants their lease to continue on as the old lease given on the old building, and the County Court is wondering if they have the power and authority to grant a lease to the Lodges.

"In getting the W.P.A. grant the rooms as above stated had to be designated as Assembly or Recreation rooms before being allowed Government aid.

"So will you please advise as soon as possible what steps for us to pursue.

"Q 2. Under the new law in regard to the County Treasurer's Salary, will you please advise when the increase or the stipulated salary will go into effect.

"Q 3. Also will you please advise if we can use the surplus money on hand that has accumulated from our Bond levy after we have paid off the bonds and interest for the year that the levy was made and no other obligations to meet. If we can use the surplus we want to buy furniture to equip our new building."

In answer to your question No. 1, we enclose a copy of an opinion given by this department to Mr. Carl F. Wymore, Prosecuting Attorney of Cole County, which holds that a county court may not lease county property for a term of years. Based upon the reasoning and authorities contained in said opinion, we have no hesitancy in holding that the county court does not have authority to grant a lease to the lodges for the third floor or any part of the courthouse for the remainder of the 99-year period or any portion thereof.

In answer to your question No. 2, we enclose a copy of an opinion given by this department under date of August 20, 1941, to Hon. Everett H. Pittman, Treasurer of Clinton County. You will note from this opinion that whether or not the stipulated salary is now in effect in your county depends on whether or not it would increase the salary of your county treasurer. If it does, it would not go into effect until the end of his term, but if not, it was effective on the 10th day of October, 1941.

In answer to your question No. 3, we assume that bonds were issued to pay for the courthouse in compliance with Article 4, Chapter 16, R. S. Mo. 1939, and that the county court, in pursuance of Section 3296 of said article, provided for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to create a sinking fund for the payment of the principal thereof within twenty years from the date of contracting the indebted-

ness. Your question is not whether the proceeds of the bond sale could be used to buy furniture for the courthouse, but whether the tax levied to pay the interest and create a sinking fund for the payment of the bonds could be used to buy furniture.

Section 11219, R. S. Mo. 1939, reads in part as follows:

"It shall be the duty of the county treasurer to separate and divide the revenues of such county in his hands and as they come into his hands in compliance with the provision of law; and it shall be his duty to pay out the revenues thus subdivided, on warrants issued by order of the court, on the respective funds so set apart and subdivided, and not otherwise; and for this purpose the treasurer shall keep a separate account with the county court of each fund which several funds shall be known and designated as provided by law; and no warrant shall be paid out of any fund other than that upon which it has been drawn by order of the court as aforesaid. * * *"

Section 11220, R. S. Mo. 1939, provides as follows:

"Any county court or judge thereof, or county treasurer, or county clerk, or other county officer, who shall order the payment of any money, draw any warrant or pay over any money for any purpose other than the specific purpose for which the same was assessed, levied and collected, or shall in any way or manner attempt so to do, shall be adjudged guilty of a misdemeanor, and on conviction thereof shall be punished as provided in section 11042."

You will note that, under the provisions of the above section, any county officer who orders the payment of any money for any purpose other than the specific purpose for which the same was assessed, levied and collected shall be guilty of a misdemeanor. The tax in question is levied, as pointed out above, for two purposes, to pay the interest and principal of the indebtedness incurred to build a courthouse, and to pay same out for any other purpose would be a violation of the above statutes.

Section 13829, R. S. Mo. 1939, reads as follows:

"Whenever there is a balance in any county treasury in this state to the credit of any special fund, which is no longer needed for the purpose for which it was raised, the county court may, by order of record, direct that said balance be transferred to the credit of the general revenue fund of the county, or to such other fund as may, in their judgment, be in need of such balance."

Under the above section, the balance credited to a special fund which is no longer needed for the purpose for which it was raised may, by order of record, be transferred to the credit of the general revenue fund, or to any other fund. However, the fund created by taxes levied to pay the interest and indebtedness in question may not be used or transferred for any other purpose until the entire indebtedness and interest thereon is paid.

It is, therefore, our opinion that funds derived from a levy to pay bonds issued to build a courthouse and interest thereon cannot be used for any other purpose unless there is a surplus after said indebtedness is paid in full.

Respectfully submitted

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APPROVED:

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