

TOLL BRIDGES: All expenses of toll bridges are to be paid from money received from the tolls on such bridges.

July 11, 1942.

7-13



Hon. W. L. Mulvania
Prosecuting Attorney
Atchison County
Rock Port, Missouri

Dear Sir:

The Attorney-General hereby acknowledges receipt of your letter of July 8, 1942, requesting an opinion from this Department. Such request is as follows:

"You will recall that on January 2, 1942 you rendered an opinion to me relative to the operation and maintenance of the Brownville Bridge which involved the question of whether or not the county court would be authorized to pay the cost of maintenance and operation from monies derived from taxation, even though the bonds and interest thereon are not paid therewith. Your conclusion was 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.

"After taking this matter up with Mr. Trauernicht, who is representing Stifel, Nicolaus & Co., the bonding company, it appears that he has finally come to the same conclusion. But it is now his contention that under the Court Order, which provides that the cost of maintenance and operation of the bridge may be paid out of funds or revenues coming to the county other than from taxation, if

the revenue from the tolls are insufficient to pay both the interest and sinking fund on the bonds as well as the operation, and maintenance, that all fees and fines deposited with the county treasurer should be so applied. This would include fees from the office of the County Recorder, Circuit Clerk, Prosecuting Attorney, Justices of the Peace, etc. Because of the present conditions the revenue from the bridge is entirely insufficient to pay the cost of operating, maintaining and repairing the bridge, in addition to maintaining the Toll Bridge Revenue Bond Interest and Sinking Fund.

"The question therefore arises whether the county has the authority to make an order pledging these sources of revenue such as fees and fines to the payment of the operation and maintenance of the bridge from the fees derived from the various county offices.

"It is my view that it certainly cannot be paid out of Class 1, 2 or 3 under the county budget law. If it could be paid from any class it would have to be from Class 4, it seems to me. This class provides: 'The county court shall next set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendable nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six.' Laws 1941, page 650.

"If it is to be paid out of Class 4 then that amount which is derived from fees and not from taxation, or so much as is necessary to

pay for the operation of the bridge would have to be allocated and set apart for that purpose so that no tax money would be used out of that Class.

"I would appreciate it very much if you would give me your opinion as to whether or not this can be done or whether the cost of operation and maintenance must be paid solely from the revenue derived from the tolls of the bridge."

The Toll Bridge apparently was constructed under and by virtue of Article 4, Chapter 46, of the Revised Statutes of Missouri, 1939. Such being the case, the manner in which the bridge is to be paid for and the manner in which it is to be operated and maintained is set out in Section 8548, R. S. Mo. 1939, which section provides as follows:

"In order to secure funds for the purpose of acquiring, constructing, owning and operating, improving or extending, and maintaining toll bridges, and approaches thereto, all public agencies named in the preceding section may issue negotiable toll bridge revenue bonds and sell such bonds to the United States Government, or any authorized agency thereof, or other investor or investors. In the event of the issuance and sale of bonds authorized by this act by a public agency, such agency shall charge a reasonable toll for the use of any such toll bridge, the amount of which toll shall be sufficient to pay the reasonable cost of maintaining, repairing and operating such bridge and to provide a sinking fund sufficient to amortize and repay any such loan, including interest and financing cost, on such dates and within such period of time as may be agreed upon between the borrower and the original purchaser of such revenue bonds, and said tolls shall be used for no other purpose; 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 from 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 other property of any such public agency or a pledge of the credit of such agency; and provided further, that at such time when all moneys 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 traveling public. Such bonds may be made negotiable, may bear interest not to exceed 6 per cent per annum, and may mature annually or semi-annually, and may be sold at such time and in such manner as the issuing authority may determine upon."

As can be seen from a study of this section, the county court may charge a toll for the use of this bridge in such an amount as to take care of the operation, maintenance and repair of such bridge and to provide a sinking fund for the purpose of repaying the loan, interest and financing costs. It further provides that the county court is required to make all provisions for the payment on 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. It is further provided that no bonds given under the authority of the act shall constitute a lien on any other property of any such public agency or a pledge of the credit of such agency.

From the wording and provisions of the above statute it is apparent what the intention of the Legislature was. They intended that the counties, and other bodies in which for the purpose of this opinion we are not interested, were to have the authority to build a bridge such as the one in question, but they were to pay for such bridge in a certain manner. This manner was to be one which was in no instance to be a burden upon the county and which was, that it was to be paid for, both in construction, maintenance, repair and operation, from the revenue derived from the tolls on such bridge.

We believe that when the Legislature set up a specific manner in which the expenses of the Brownville Bridge were to be paid as was done in Section 8548, supra, that they had in mind an old legal maxim with which many of us are familiar. This maxim is "Expressio Unius Est Exclusio Alterius," which translated means "the expression of one thing is the exclusion of another." In other words, they have set up a specific procedure in this matter, which excludes any other.

In speaking of the liability of a public body in a matter of this kind, the Supreme Court of Missouri in State v. Smith, 74 S. W. (2d) 367, l. c. 371, said:

"We have consistently ruled that bonds or other forms of obligation issued by cities, counties, political subdivisions, or public agencies by legislative sanction and authority, if such particular bonds or obligations are secured and payable only from the revenues to be realized from a particular utility or property, acquired with the proceeds of the bonds or obligations, do not constitute debts of the particular political subdivision or public agency issuing them within the definition of 'debt' as used in the constitutional provisions of this state."

We do not feel that the county has any authority to make an order pledging the fees and fines deposited with the treasurer, for the payment of any of the indebtedness or upkeep of the Brownville Bridge.

July 13, 1942

Conclusion

Therefore, it is the opinion of this department that the County Court of Atchison County does not have the authority to make an order pledging the fees and fines to be deposited with the Treasurer of the county, to the payment of any indebtedness of the Brownville Bridge. We do not, in the light of the statute cited above, deem it necessary to discuss the proposition of the fees and fines being earmarked for other purposes, since the statute seems to be very plain and unambiguous.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

JSP:EG