

TOWNSHIPS: Section 26(a) Article VI of the 1945 Constitution, is a limitation on the amount of indebtedness a township board may incur for the township in any year without popular vote. Valid warrants issued by a township in previous years and still outstanding are not to be counted in computing the amount of indebtedness for the current year.

July 1, 1947

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Mr. H. G. Shaffner  
Commissioner of Finance  
Jefferson City, Missouri

Dear Sir:

This is in reply to your letter dated May 15, 1947, which reads in part as follows:

"I am in receipt of the following letter from one of the examiners of the Federal Deposit Insurance Corporation:

"Many banks in Missouri have been accepting township warrants, and a few have made direct loans and have accepted warrants as evidence of such debts.

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"In view of the importance of township warrants in certain state chartered banks in Missouri, I would appreciate clarification of the following questions.

"Does Article VI, Section 26(a) of the Constitution of the State of Missouri, alter or nullify the provisions of Section 13978, Mo. R. S. 1939?

"Does a township board have authority to borrow, either by issuance of a warrant or execution of a promissory note, without popular vote?"

"May I be favored with an opinion of your Department with regard to the two instances mentioned."

Section 26(a), Article VI of the 1945 Missouri Constitution, provides:

Mr. H. G. Shaffner

"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."

Section 13978, R.S. Mo. 1939, provides:

"Any person having a claim or account against the township may file such claim or account in the office of the township clerk, to be kept by the said clerk, and laid before the township board at their next meeting; Provided, however, that any person having a claim against the township may present said claim to the township board himself, or by an agent, at any legally convened meeting of said board; said board shall have the power to determine the legality or illegality of any claim or account against the township, and to reject said claim, or any part thereof, as to them appears just and proper; but in no case shall the township board be authorized to allow any claim, or any part thereof, until the claimant makes out a statement, verified by affidavit to the amount and nature of his claim, setting forth that the same is correct and unpaid, or, if any part thereof has been paid, setting forth how much."

The point for clarification presented by the first question may be stated thusly: With regard to township warrants found in a bank, what effect is to be given to Section 26(a), Article VI of the 1945 Constitution; how does it operate with respect to Section 13978; and what warrants issued by townships are to be counted in determining the indebtedness within the prohibition of Section 26(a), Article VI of the Constitution.

At the outset it should be stated that a township warrant does not constitute a new debt or evidence of a new debt, but

Mr. H. G. Shaffner

is only the prescribed means for drawing money from the municipal treasury to pay an existing debt. Dillon on Municipal Corporations, Section 851. As is stated in 63 Corpus Juris, page 176, "a township can not create a debt unless there is an antecedent legislative authority, direct, or implied from the necessity of performing a duty involving the spending of money."

The Legislature has provided for the final policy and practices to be followed by the township board in handling public money, and we must therefore look to the statutes relating to township organization. These statutes govern the procedure a township must follow in dealing with the public funds.

Section 13968, R.S. Mo. 1939 provides that the treasury shall not pay out any money belonging to the township for any purpose whatever, except upon the word of the township board of the directors, signed by the chairman of said board and attested by the township clerk.

Section 13983, R. S. Mo. 1939 reads as follows:

"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."

In commenting on these sections including Section 13978 the court said in *Missouri Township, Chariton County v. Farmers' Bank*, 42 S. W. (2d) 353 at l. c. 356:

"These statutes were enacted by the Legislature for a purpose, that is, to safeguard the funds of the public, to establish a regular procedure, and prescribe an orderly manner in which the public funds may be expended. \* \* \*"

Mr. H. G. Shaffner

It will be seen from the foregoing statutes that the township is authorized to issue warrants when they ascertain that there is a sum of money due from the township. The purpose of the warrant is to pay the accounts due from the township to its creditors.

In the early case of International Bank of St. Louis v. Franklin County, 65 Mo. 105 the court was considering sections of the statutes applicable to county courts which are very similar to the above quoted sections applicable to townships. In the course of the discussion the court said at l. c. 111:

"It will be observed respecting warrants of the sort under consideration that the statute (1 W. S. Section 32 p. 415) provides that 'every such warrant shall be drawn for the whole amount ascertained to be due to the person entitled to the same.' So that according to express statutory provision each warrant is an ascertainment that the sum therein mentioned is 'due' to the person in whose favor the warrant is drawn. And it will be further observed that the preceding section (31) makes it the duty of the court, before ordering their clerk to issue a warrant, to ascertain the 'sum of money to be due from the county.' In consequence of these provisions of the statute it follows that each warrant, whether drawn on a general or special fund, for the statute makes no distinction, is both a judicial ascertainment and a written acknowledgement of indebtedness by the county. \* \* \* \* \*

The same reasoning can be applied to township warrants, and it would thus appear that warrants are to be issued only after there has been an ascertainment and determination by the township board that the township is indebted to the party presenting the claim. There is no law expressly authorizing a township board to borrow money from a bank and issue a warrant for such indebtedness.

Mr. H. G. Shaffner

The source of Section 26(a), Article VI of the 1945 Constitution is Section 12, Article 10 of the 1875 Constitution, which reads as follows:

"No county, city, town, township, school district or other political corporation or subdivision of the state shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, \* \* \* \* \*"

In commenting on this provision the court in State ex rel. v. Johnson 162 Mo. 622 said at l. c. 628:

"A correct answer to the first proposition can only be given by keeping in view section 12 of article 10 of the Constitution, which ordains that 'no county . . . shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose; nor, in cases requiring such assent, shall any indebtedness be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein.'

"It was ruled in Book v. Earl, 87 Mo. 246, that 'the evident purpose of the framers of the Constitution and the people who adopted it was to abolish in the administration of county and municipal government, the credit system, and establish the cash system by limiting the amount of tax which might be imposed by a county for county purposes, and limiting the expenditures in any given year to the amount of revenue which such tax would bring into the treasury for that year.' But it was at the same time said: 'Under this section the county court might anticipate the revenue collected, and to be collected, for any given year, and con-

Mr. H. G. Shaffner

tract debts for ordinary current expenses, which would be binding on the county to the extent of the revenue provided for that year, but not in excess of it.'

"It was then anticipated that, though the county court might not issue warrants in excess of the levy for a year's current expenses, and that a creditor might rely upon the fact that his contract was within the amount of revenue levied and provided, and trust to the power of the State to enforce its taxes, still it might happen from some unforeseen cause enough of the estimated amount of revenue might not be collected to pay all the warrants drawn against it in anticipation. Under such circumstances it has never been ruled that such a creditor's warrant was absolutely void and extinguished by the non-payment in the year in which it was drawn. On the contrary, this court has often said in no uncertain terms that it was valid and payable out of any surplus revenue in the hands of the county treasurer that might arise in subsequent years.  
\* \* \* \* \*

The case of Andrew County ex rel. v. Schell 135 Mo.31, involved the situation where the county treasurer refused to pay certain county warrants, issued to the holder thereof by the county court in previous years for expenses for those previous years. The amount of these warrants, if added to other outstanding warrants, was in excess of all the revenue provided for the county for the years in which the several warrants in the suit were issued, but the warrants issued by the county for the several fiscal years in which these warrants were issued were not, if taken alone and separate from the unpaid warrants of previous years, in excess of the revenue for the several years when issued. The court said at l. c. 39:

"In view of the agreement that the warrants involved in this controversy were issued against the proper funds for expenses incurred by said county during the various years in which they were

Mr. H. G. Shaffner

issued, and that, when considered alone, and separate from unpaid warrants of former years were not in excess of the revenues for the several years when issued, and especially in the absence of the evidence as to how the county became in default in the payment of its warrants, whether by drawing more warrants in some preceding year or years, than its revenues or by the loss or failure to collect some part of its revenues, we are not inclined to hold these warrants void, as having been issued in excess of the revenues of the year in which they were respectively issued."

In view of the above then, we think the effect of Section 26(a), Article VI of the 1945 Constitution, can be stated generally as was stated by the court in State ex rel. Hannibal v. Smith, 335 Mo. 825, where the court said at l. c. 833:

"In substance, Section 12, Article X of the Missouri Constitution provides specifically against the incurring of an indebtedness in an amount exceeding the income and revenue provided for the year in which said indebtedness was incurred without the consent of two-thirds of the voters voting on the proposition." (Under-scoring ours.)

The above referred to cases were decided in light of the section which is now Section 13978 providing for the presentation of claims against the township. As was pointed out in the Chariton County case, supra, this statute is to establish an orderly and safe manner in which public funds are to be expended.

Section 26(a), Article VI is a prohibition as to the amount of indebtedness a township may incur in any one year. When, as you state in your request, township warrants are found in certain banks, and some of these warrants may have been issued several years previously, whether these warrants are to be included in computing the amount of indebtedness so as to come within the debt limit provision of the Constitution would, of course, depend upon the facts of the case and the nature of the warrant. Generally speaking the validity of a township debt upon which an action is brought

Mr. H. G. Shaffner

so far as the limitation of indebtedness is concerned must be determined as of the time when the debt was incurred. If at the time of the issuance of the warrants they were valid warrants not exceeding the debt limit provision of the Constitution, then such warrants are valid obligations of the township in subsequent years. It would follow then that these previously issued warrants are not to be included for the purpose of determining the indebtedness of the township for the current year in compliance of Section 26(a), Article VI, where it says no such township:

"\* \* \* \* 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, \* \* \* \* \*"

The remaining question as to the authority of a township board to borrow money has been in part answered by the foregoing. We feel the law generally, as to the authority of a township to borrow money, is as stated by the Supreme Court of Pennsylvania in *Georges Township v. Union Trust Co.*, 143 Atl. 10, where they said at l.c. 14:

"Generally speaking, a township, like any other municipality or quasi municipal body, may act only through powers that have been conferred on them by the Legislature, or a necessary implication of power associated with a given function. When a municipality desires to create a debt or borrow money, there must be some antecedent legislative authority either direct or implied from the necessity of performing a duty which must involve the spending of money. \* \* \* \* \*"

We know of nothing that would prevent the Legislature granting to townships the authority to borrow money. The rule as to incurring indebtedness and borrowing money is generally much the same as regards counties, and in certain cases counties by statute have been given this authority, an example of which is the commonly referred to county budget law. As was stated in *Thomas v. Buchanan County*, 51 S.W. (2d) 95, where the court was referring to the constitutional limitation on incurring indebtedness contained in Section 12, Article X, of the 1875 Constitution, at l.c. 99:

Mr. H. G. Shaffner

"\* \* \* \* We see nothing in this section forbidding the enactment of state laws authorizing counties to borrow money so long as the indebtedness does not exceed the constitutional limit. Cases which say sections 11 and 12 of article 10 of the Constitution put the counties of the state on a cash basis mean merely that the indebtedness contracted in any year shall not exceed the anticipated revenue for that year. \* \* \* \* \*"

However, from a review of the statutes applicable to townships, we have found no authority granted them to borrow money from a bank and issue a promissory note therefor.

CONCLUSION

In view of the above, it is the opinion of this department that Section 13978, R.S. No. 1939, and Section 26(a), Article VI of the 1945 Constitution, are quite reconcilable. That Section 13978 is for the purpose of establishing an orderly manner in which public funds are to be expended with an eye to also providing a safe check to such expenditure. Section 26(a), Article VI, is a constitutional limitation on the amount of indebtedness that a county, city, incorporated town or village, school district or other political corporation or subdivision of the state shall incur. Warrants issued by a township in previous years that are still outstanding, if a valid debt against the township at the time of issuance, generally speaking, are not to be included in computing the amount of indebtedness for such township for the current year within the provisions of Section 26(a), Article VI of the Constitution.

It is further the opinion of this department that the township board has no authority to borrow money and issue warrants therefor.

Respectfully submitted,

APPROVED:

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