

BONDS:
COUNTY COURT:
COUNTY TREASURER:

County court is prohibited by Sec. 26(a), Art. VI of Constitution, from becoming indebted exceeding in any year the income and revenue

provided for such year, and contract between county and surety company for payment over 4 year term of premiums on county treasurer's bond, given for protection of school fund, does not bind county for more than one year. County court may in any year set bond required of treasurer for protection of school money.

January 12, 1948



Honorable Ralph Baird
Prosecuting Attorney
Jasper County
Joplin, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department and reading, in part, as follows:

"There follows an outline of the facts and request for an opinion thereon in relation to power of the Jasper County Court to reduce the amount of the school fund bond given by the Jasper County Treasurer during his term of office. His term of office began January 1, 1947, and will expire December 31, 1950.

"Mr. Mote entered into a general fund bond in the amount of \$60,000, the same being a surety bond. He entered into another bond, a school fund bond, in the amount of \$375,000. You are familiar with the liquidation of the accumulated funds during the current year, which in this county, was in a sizeable amount. The County Court believes that the best interests of the people will be sufficiently served by a reduction in the amount of the school fund bond from \$375,000 to \$200,000. The purpose of the County Court in seeking this reduction is to save the county something on the high annual payments.

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"The surety company contends the County Court does not have the power to reduce the bond during the Treasurer's term of office. The company insists that it would gladly reduce the bond and let the County realize the savings if the same could be done, but feel that if such mechanics are gone through the surety company would still remain liable for the original higher amount both on the theory that the premium was fixed and a bond given for the four-year term, with the County permitted to pay annually installments for its own convenience, and also for the aforesaid reason that there is no authority for such reduction.

* * * * *

Section 26(a) of Article VI of the Constitution of Missouri provides as follows:

"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."

This section is substantially a reenactment, in part, of Section 12 of Article X of the Constitution of 1875.

In the case of Ebert v. Jackson County, 70 S. W. (2d) 918, the Supreme Court of Missouri held that a contract whereby the county agreed to pay a total rental of \$4,320.00 for a room in Kansas City, Missouri, at a monthly rental of \$90.00, payments to be made on the first day of each month, violated Section 12 of Article 10 of the Constitution. The court said, l. c. 920:

"The contract was an effort to anticipate the income and revenue of the county for several years following the year the contract became effective. It created a debt within the meaning of said section of the Constitution, and is void."

Since under the provisions of Section 26(a) of Article VI of the Constitution of Missouri, a county is not allowed to become indebted in an amount exceeding in any year the income and

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revenue provided for such year, and the court has held that under such constitutional provision the county court is not allowed to anticipate the income and revenue of the county for several years following the year a contract becomes effective, we believe that the contract in the present case between the county and the surety company, whereby the county was to pay the premiums on the treasurer's bond, was a valid and binding contract for only one year. Therefore, the county is under no obligation to pay the premium on the bond of the treasurer which was the subject of such contract.

Since the contract was valid for only one year and is not now binding upon the court, it is clear that the county court may now, under the provisions of Section 10400, Laws of Missouri, 1945, page 1708, determine the amount of the bond that is to be given by the treasurer for the protection of such funds.

CONCLUSION

It is the opinion of this department that the County Court of Jasper County could not, during the year 1947, enter into a contract with a surety company whereby the county was to pay the premiums on the treasurer's school bond for a period of four years, so as to bind the county for a longer period than one year, and the county is not liable to pay such premiums for years other than 1947.

It is further the opinion of this department that the county court may now require a bond in such amount as it deems proper for the treasurer's school bond, under the provisions of Section 10400, Laws of Missouri, 1945, page 1708.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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