

BONDS:
SCHOOL DISTRICTS:

Bonds issued by Frankford School District for payment of general expenses of the school district are eligible for registration.

August 7, 1951

Honorable W. H. Holmes
State Auditor
Jefferson City, Missouri

Attention: Mr. Alvin Papin, Bond Clerk

Dear Sir:

8-29-51



This will acknowledge receipt of your request for an official opinion which reads:

"The Frankford Missouri School District has voted bonds in the amount of \$12,000.00, for the purpose of giving the district necessary funds to pay the general expenses of the school.

"This office has refused to register the bonds for the reason that there is no statutory provision for their issuance. We enclose a letter herewith from the Law office of Mr. Jas. B. Clemens, Bowling Green, Mo., supporting their contention that these bonds should be registered.

"Please give us your opinion as to whether or not these bonds are eligible to be registered."

You state that you have refused to register the bonds for the reason there is no statutory authority to issue said bonds. We do not find any specific statute authorizing the issuing of bonds for general school expenses. We find Section 165.040, RSMo 1949, authorizing the issuance of school bonds, and it provides that a board of directors of a school, for the purpose of purchasing schoolhouse sites, erecting schoolhouses, library buildings and furnishing the same and building additions to or repairing old buildings, is authorized to borrow money and issue bonds and provides for an election to finally determine if the loan shall be made. Section 165.040, supra, reads in part:

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"1. For the purpose of purchasing school-house sites, erecting schoolhouses, library buildings and furnishing the same, and building additions to or repairing old buildings, the board of directors shall be authorized to borrow money, and issue bonds for the payment thereof, in the manner herein provided. The question of loan shall be decided at an annual school meeting or at a special election to be held for that purpose. Notice of said election shall be given at least fifteen days before the same shall be held, by at least five written or printed notices, posted in five public places in the school district where said election shall be held, and the amount of the loan required, and for what purposes; it shall be the duty of the clerk to sign and post said notices. The qualified voters at said election shall vote by ballot. Those voting in favor of the loan shall have written or printed on their tickets, 'For the loan;' those voting against the loan, the words 'Against the loan,' and if two-thirds of the votes cast on the proposition shall be for the loan, the district board shall be vested with the power to borrow money, in the name of the district, to the amount and for the purpose specified in the notices aforesaid, subject to the restrictions of section 165.043."

While it might be argued under decisions that the terms of the foregoing statute are sufficiently broad to include general school expenses, we deem it unnecessary to further explore that line of authority for the reason we are inclined to believe that Section 26(b) of Article VI of the Constitution of Missouri, 1945, is self-enforcing and needs no act of the Legislature to make it effective. Section 26(b), Article VI, reads:

"Any county, city, incorporated town or village, school district or other political corporation or subdivision of the state, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted

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in an amount not to exceed five per centum of the value of taxable tangible property therein as shown by the last completed assessment for state and county purposes."

In State ex rel. Brown v. Woods, 61 S.W. (2d) 732, 332 Mo. 1123, the court held that constitutional provisions limiting the rate of taxation for school purposes are self-enforcing. See also Thomas v. Buchanan County, 51 S.W. (2d) 95, 330 Mo. 627. In State v. Smith, 194 S.W. (2d) 302, l.c. 304, the court held that a constitutional amendment was self-executing if it provided for an election to be held in a municipality and where there was no special statutory provision for the holding of an election that the general statutes in relation to elections authorizing the contract of debts in excess of a municipality's annual income and revenue was applicable, and in so holding, the court discussed numerous other decisions and said:

" * * * We think the language so plain, and its intent so evident that it must be held to directly confer upon the city the authority to issue and sell such revenue bonds as are here under scrutiny 'by vote of four-sevenths of the qualified electors thereof voting thereon.' It is true that there is no statute expressly providing the manner of conducting an election to determine whether or not a municipality shall issue such revenue bonds, so the question is reduced to whether this circumstance is an insurmountable barrier. It will be recalled that it is conceded that said proposition was approved by a vote of more than four-sevenths of the electors voting at the special election, which election complied in every way with the general statutes in relation to elections to authorize the contracting of debts in excess of a municipality's annual income and revenue (§ 7368-7372). We have reached the conclusion that, in view of our holdings under closely analogous situations, the utilization of the general statutes just referred to was authorized and efficacious.

"State ex rel. Clark County v. Hackmann, 280 Mo. 686, 218 S.W. 318, is directly in point.

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There a constitutional provision was held to be self-executing which granted power to counties to create debts for county public purposes by elections (by a prescribed majority) held for the purpose, but no machinery was provided for such election. A special election was called upon a petition signed by more than 300 voters and taxpayers at which the proposition to issue the bonds was submitted, and approved by the requisite majority. After that election, and before the case was determined on appeal, the legislature passed an act specifically providing a method of holding such elections. And this court held it sufficient if there is used the ordinary and usual machinery provided for obtaining the expression of the voters upon the question. The following from State ex rel. Miller v. Missouri K. & T. Ry. Co., 164 Mo. 208 loc. cit. 213, 64 S.W. 187 loc. cit. 188, was cited approvingly: 'The power being conferred to hold an election, and no means provided therefor, carries with it as an inevitable and indubitable incident the usual and customary means to put into effect the power thus conferred.' The court further held that despite the later enacted specific act, there was authority for the election. The Clark County case was followed in the later case of State ex rel. Gilpin v. Smith, 339 Mo. 194, 96 S.W. 2d 40."

Section 165.047, RSMo 1949, provides that all bonds issued by such school districts shall be issued under the same procedure and in the same manner as bonds authorized by Section 165.040, supra.

In view of the foregoing decisions, we believe Section 26(b), Article VI of the Constitution of Missouri, 1945, is self-enforcing, and in the absence of any particular statutory procedure for holding an election under the foregoing constitutional amendment, we are of the opinion that the general procedure prescribed under Section 165.040, supra, is applicable.

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CONCLUSION

Therefore, it is the opinion of this department under Section 26(b), Article VI of the Constitution of Missouri, 1945, and the foregoing decisions, that the bonds voted by the Frankford, Missouri School District in the amount of \$12,000.00 for the purpose of defraying general expenses of the school are eligible for registration if they do not exceed the limitations contained in said constitutional provision and there are no irregularities in the election and said bonds are in proper legal form.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

ARH:VLM