

COUNTIES:
COUNTY PARKS:
BONDED INDEBTEDNESS:
COUNTY PROPERTY:

(1) County of third class has power to issue bonds for acquisition of land for park purposes, and (2) County of third class has power to convey land acquired from proceeds of bond issue to instrumentalities of the State of Missouri for a valuable consideration.



February 11, 1955

Honorable Scott O. Wright
Prosecuting Attorney
Boone County
Boone County Courthouse
Columbia, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"Please disregard my request for an opinion dated January 22, 1955 and in place thereof give me an opinion as to the two following questions, to-wit:

- "(1). Whether a county of the third class can have a bond issue to purchase land in the name of the county for parks and recreation areas.
- "(2). Whether a county of the third class can convey title to land acquired by a bond issue to a state instrumentality for valuable consideration.

"Thanking you for your prompt attention to this matter, I am"

With respect to the first question which you have proposed, your attention is directed to the following provisions found as Sections 26(b) and 26(c), Article VI, of the Constitution of Missouri:

Sec. 26(b).
"Any county, city, incorporated town or village, school district or other political corporation or subdivision of the

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state, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted 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."

Sec. 26(c).

"Any county or city, by vote of two-thirds of the qualified electors thereof voting thereon, may incur an additional indebtedness for county or city purposes not to exceed five per centum of the taxable tangible property shown as provided in section 26(b)."

To implement the quoted constitutional provisions, the General Assembly has enacted what now appears as Chapter 108, RSMo 1949, providing the mechanics for the conduct of elections to test the sense of the electorate upon proposals to increase the indebtedness of counties. Found in such chapter are Sections 108.010 and 108.020, which read as follows:

Sec. 108.010

"Any county in this state, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years; provided such indebtedness shall not exceed five per cent of the value of taxable tangible property therein as shown by the last completed assessment for state and county purposes."

Sec. 108.020

"Any county in this state, by vote of two-thirds of the qualified electors thereof voting thereon, may incur an indebtedness for county purposes in addition to that authorized in section 108.010 not to exceed five per cent of the taxable tangible property shown as provided in said section."

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The foregoing constitutional and statutory provisions disclose that counties of any class do have the authority to become indebted through the issuance of bonds for public county purposes. Your first question, therefore, resolves itself into the determination of whether the acquisition of land for park and recreational purposes is one for which such an indebtedness may be incurred upon an affirmative vote of the requisite number of electors.

We think that the question is to be answered in the affirmative. The use of public funds for the acquisition of park and recreational areas is recognized as being a proper expenditure, not only by the Constitution itself but also by numerous statutory enactments. For instance, Section 47, Article III of the Constitution establishes a state park fund to be expended for the acquisition and maintenance of state parks and state park property. Section 30, Article IV, of the Constitution authorizes the State Highway Commission to expend money in state parks for highways and bridges.

As more nearly applicable to the question you have proposed, we direct your attention to the provisions of Section 64.450, RSMo 1949, relating to all counties in the State of Missouri. It reads as follows:

"County courts in all counties in the state of Missouri may set aside five per cent of the county revenue fund for the purchase of county parks and the maintenance thereof. Titles to land purchased shall be taken in the name of the county, and each court is authorized to set aside a sufficient amount each year for the maintenance of said parks when purchased."

Certainly this legislative enactment, although only providing for a limited source of funds for park purposes, does amount to a recognition of such expenditures being ones for a valid public county purpose. Many other statutes found relating to counties of classes one and two with respect to parks, and others relating to public reservation districts, while not directly applicable to Boone County which is one of the third class, yet clearly evidence the public nature of parks and recreation areas.

Your second question involves the authority of a county of the third class to sell and convey, for a valuable consideration,

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real property owned by such county. You have referred to "land acquired by bond issue." However, we do not believe the source of funds used for acquiring real property to be determinative of the right of the county to thereafter convey such real property. It is our thought that the power of the county, acting through its county court in such regard, is governed by Sections 49.270 and 49.280, RSMo 1949. They read as follows:

Sec. 49.270

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

Sec. 49.280

"The county court may, by order, appoint a commissioner to sell and dispose of any real estate belonging to their county; and the deed of such commissioner, under his proper hand and seal, for and in behalf of such county, duly acknowledged and recorded, shall be sufficient to convey to the purchaser all the right, title, interest and estate which the county may then have in or to the premises so conveyed."

Your question indicates that it is proposed to convey the real property of the county to a state instrumentality for a valuable consideration. We are further advised that such state instrumentality will thereafter undertake to improve and maintain such real property for the precise purpose for which it will be acquired by the county. In other words, a distinct benefit will accrue not only to the citizens of the particular county wherein the park and recreational area is situated, but that, through the larger funds which will be made available for further improvement and maintenance of such facilities as a result of its being owned by a state instrumentality, such benefits will be enjoyed by citizens of many other counties.

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One word of caution must be given, however, in connection with the conveyance of such real property: It must always be remembered that in dealing with county property, the county court acts in a fiduciary capacity with limited powers and subject to the limitations that such dealings must be those of careful and prudent businessmen. This becomes of importance in determining the validity of any proposed conveyance of not only the real property referred to in your letter of inquiry, but with respect to any other county property.

The general rules applicable, both to the power of the county court in regard to county property, and to the limitations imposed upon the exercise of such power, are concisely summed up in *Butler County v. Campbell*, reported 182 S.W.2d 589, from which we quote:

" * * * The allegations do not concern transactions between private individuals, but rather the acts of public officers in the discharge of their official duties in dealing with the real estate and capital school fund of the county. Under the laws of this state, the county court is vested with full power and authority to control and manage the real and personal property of the county and, 'for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county.' Sec. 2480, R.S. 1939, Mo.R.S.A. In directing how this power and authority shall be exercised, the statutes provide that 'the county court may, by order, appoint a commissioner to sell and dispose of any real estate belonging to their county.' Sec. 13784, R.S. 1939, Mo.R.S.A. It is apparent that 'county courts are constituted the guardians of the property interests of their respective counties. "They occupy a position of trust" in that respect, "and in that relation are bound to the same measures of good faith towards the counties which is required of an ordinary trustee towards his cestui que trust, or an agent towards his principal.' *State ex rel. Garland County v. Baxter*, 50 Ark. 447, 8 S.W. 188, 190; *Willard v. Comstock*, 58 Wis. 565, 17 N.W. 401, 406, 46 Am. Rep. 657. 'County courts are * * * the agents

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of the county, with no powers except what are granted, defined, and limited by law; and, like all other agents, they must pursue their authority, and act within the scope of their powers.' State ex rel. Quiney, Mo. & Pac. R. Co. v. Harris, 96 Mo. 29, 37, 8 S.W. 794, 795. The county courts act for the counties in relation to funds held in trust for public school purposes. Secs. 10376, 10378, and 10384, R.S. 1939, Mo.R.S.A.; Montgomery County v. Auchley, 103 Mo. 492, 502, 15 S.W. 626. The members of the court, as public officers, do not act as individuals with relation to their own property, but as special trustees with limited authority. Saline County v. Thorp, 337 Mo. 1140, 88 S.W.2d 183, 186. They are required to act with reasonable skill and diligence and to discharge their duties with that prudence, caution and attention which careful men usually exercise in the management of their own affairs. * * *

CONCLUSION

In the premises, we are of the opinion:

(1) That a county of the third class may lawfully become indebted, through the issuance of general obligation bonds of such county within the limits and in accordance with the elective requirements of the Constitution and statutes, for the purpose of acquiring real property to be used as a park and recreational area; and

(2) That real property so acquired may thereafter be conveyed for a valuable consideration to an instrumentality of the State of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton
Attorney General

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