

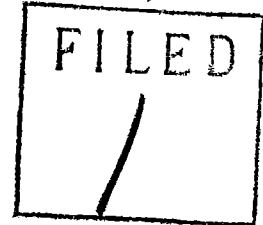
COUNTY COURT:  
SPECIAL ROAD DISTRICTS:  
BONDS:

Special Road District unauthorized  
to vote bonds to retire road district  
notes held by a bank as security for  
a loan to the Special Road District.

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March 20, 1941.

Honorable George Adams  
Prosecuting Attorney  
Audrain County  
Mexico, Missouri



Dear Mr. Adams:

This will acknowledge receipt of your request  
for an official opinion, under date of March 6, 1941,  
which reads as follows:

"May I have your office's opinion  
on the following:

"A special road district of this  
county has borrowed money from a  
certain bank in the amount of  
approximately \$6000.00, which  
indebtedness is evidenced by the  
district's notes.

"The district desires to issue  
bonds for \$8000.00, \$6000.00 of  
which will pay off the indebtedness  
and the balance will be used for  
strictly road purposes.

"Can such bonds be issued under  
the general authority of the  
district to issue 'road bonds'.

"Can such bonds be issued under  
the article permitting road  
districts and other political sub-  
divisions to issue 'funding bonds',  
or are such funding bonds limited

to bonded indebtedness and judgment indebtedness?

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

Under Section 3279, R. S. Mo. 1939, funding and re-funding bonds may be issued under certain circumstances by a special road district and said section reads as follows:

"The various counties in this state for themselves as well as in behalf of any township or parts of townships for which said counties may have heretofore issued any bonds, and the several cities, villages, incorporated towns, school districts and road districts in this state, are hereby authorized by their respective county courts and the said cities, villages, incorporated towns, school districts and road districts by their proper authorities, to fund or refund any part or all of their bonded or judgment indebtedness, including bonds, coupons or any judgment, whether based on bonded or other indebtedness, and for that purpose may make, issue, negotiate, sell and deliver renewal, funding or refunding bonds, and with the proceeds thereof pay off, redeem and cancel such judgments or old bonds and coupons as the same mature or are called for redemption, or such renewal, funding or refunding bonds may be issued and delivered in exchange for the judgments, bonds or coupons to fund or refund which the renewal, funding or refunding bonds were issued: Provided, that in no case shall the amount of the debt of any such county, township or parts of

townships, or city, village, incorporated town, school district or road district be increased or enlarged under the provisions of this chapter; and provided also, that no renewal, funding or refunding bonds issued under this chapter shall be payable in more than twenty years from the date thereof, and that such renewal, funding or refunding bonds shall be of the denomination ~~of~~ not more than one thousand dollars (\$1,000) nor less than one hundred dollars (\$100) each, and shall bear interest at a rate not to exceed six per centum (6%) per annum, payable annually or semi-annually, and to this end each bond shall have annexed thereto interest coupons, and such bonds and coupons shall be made payable to bearer: Provided further, that nothing in sections 3279 to 3281, inclusive, shall be so construed as prohibiting any county, city, township, school district or road district from renewing, funding or refunding such debt without the submission of the question to a popular vote: Provided, however, that no indebtedness, judgment or claim founded on bonds or coupons issued in the aid of or in payment for the capital stock of any railroad company shall be funded, nor shall any bonds be issued in lieu thereof or in compromise therefor until authorized by a majority of the qualified voters of such county, city, township or parts of townships voting at an election held for that purpose pursuant to an order entered of record by the county court of such county or council or aldermen of such city on petition of at least fifty of the resident taxpayers of such county, city or township, after public notice by advertisement in some weekly newspaper printed and published in such county or city, if there be such paper, and if not, then in such paper nearest to such county or city, setting forth the object of the election, for four

weeks, and in addition posting up ten written or printed handbills in public places in such county or city, before the time for such proposition to fund its said indebtedness shall be voted on, which said notice shall contain the object and general nature of the proposition to fund said indebtedness. The election herein provided for shall be held in conformity with the statutes of the state covering state, county or municipal elections. And when such indebtedness has been once compromised and funded, the funding bonds issued in lieu thereof may again be refunded according to the other provisions of this article without such election."

The above provision authorizes the issuance of funding or refunding bonds but only to fund or refund any part or all of their bonded or judgment indebtedness, including bonds, coupons or any judgment, whether based on bonded or other indebtedness, and with the proceeds thereof pay off, redeem and cancel such judgments, or old bond and coupons as the same mature or may be called for redemption, or such renewal funding or refunding bonds may be exchanged for the judgment, bonds or coupons to fund or refund which the renewal, funding or refunding bonds were issued.

In construing statutory provisions, one of the cardinal rules is to determine the intent of the legislature and to give it that meaning, if at all possible. (Wallace vs. Woods, 102 S. W. (2d) 91, 340 Mo. 452). Lee vs. Hancock Co., 178 Sp. 790, l. c. 792, the court defined refunding bonds as follows:

"\* \* \* a refunding bond 'is a bond issued to pay off an older issue,' Webster, op. cit.; before a debt can be refunded, it must, of course, have been first funded."

As stated in the above citation, Webster's New International Dictionary, 2nd Edition, defines "refunding bond" as:

"A bond issue to pay off an older bond."

Also, in Bay Co. et al. vs. State, 157 So. 1, 1. c. 2, the court said:

"Refunding bonds are not only obligations in themselves for what they purport to be on their face and under the statutes pursuant to which they are issued, but are authorized extensions and continuations of the obligations represented by the bonds that are refunded. State v. Sholtz, (Fla.) 155 So. 736, 739."

Therefore, from a careful examination of the above statutory provision and decisions, construing funding and refunding bonds, we conclude that it was never contemplated that a funding or refunding bond shall issue to meet expenditures of a special road district unless such expenditures have been reduced to judgment or bonded indebtedness.

It is well established that special road districts are creatures of statute and can exercise only such powers as are granted by the constitution or statute. In Harris vs. Bond Co., 244 Mo. 664, 1. c. 688, the court said:

"It is the consensus of opinion in this country that the Legislature in the creation of municipal and

public corporations of every description is absolute and unlimited, in the absence of some specific State or Federal constitutional provision restricting such powers.

"The Legislature is vested with the whole power of the State in the absence of some such constitutional limitation; and may establish any public or municipal corporation it deems necessary or expedient in the public interest.

"It may also confer upon such corporations such public power and authority as it may deem wise and best. Moreover, it may not only create such public corporations, but it may also change, divide and abolish them at pleasure.

\* \* \* \* \*

"These corporations are bodies politic; created by laws of the State for the purpose of administering the affairs of the incorporated territory. They exercise powers of government, which are delegated to them by the Legislature, and they are subjected to certain duties. They are the auxiliaries, or the convenient instrumentalities, of the general government of the State for the purpose of municipal rule. . The whole interests are the exclusive domain of the government itself and the power of the Legislature over them is supreme and transcendent; except as restricted by the Constitution of the State. \* \* \*"

In answering your request, we are assuming that the special road district referred to is one organized under

Article 10, Chapter 46, R. S. Mo. 1939. If this be true then, under said article, we find many powers granted the special road district commissioners, but no where are we able to find any authorities for borrowing money from a bank and giving a special road district note as security for such a loan. Under Section 8721, R. S. Mo. 1939, there is some authority, under limited condition, for a special benefit assessment road district to borrow money, but such provision is only applicable to those districts organized under Article 11, Chapter 46, R. S. Mo. 1939.

The special road district commissioners may purchase, sell, construct and keep in good repair roads and bridges, keep records of all expenditures and income and repair same, there are further provisions for raising money such as levies, taxes and voting bond issues. But there is no specific provision or can we, by implication or inference, find anything in the constitution or statute which leads us to believe that the legislature ever intended that the special road district, organized under the above article, shall borrow money at a bank and give their notes as security for same. Therefore, since a road district can only exercise such powers as given them, by the constitution and the statute, we must hold that a special road district can not vote on a bond issue to retire these notes which are held by the bank as security for a loan.

We are enclosing a copy of an opinion rendered by this department, under date of March 9, 1934, to Honorable Elliott Dampf, Prosecuting Attorney of Cole County, Missouri, which holds, the county court can not borrow money by issuing notes on anticipated revenue. Which the writer believes is applicable as to other political subdivisions.

#### CONCLUSION.

Therefore, in conclusion, it is the opinion of this department that no bond issue can be presented

Hon. George Adams

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for a vote of the people in this special road district, the proceeds of which shall be used to take up the notes given to secure a loan made to said road district, by a bank, and which are now held by said bank, for the reason, such a loan does not come within the purview of Article X, Chapter 46, R. S. Mo. 1939.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.  
Assistant Attorney General

APPROVED:

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VANE C. THORLO  
(Acting) Attorney-General

ARR:LB  
Encl.