

BOARD OF FUND COMMISSIONERS: Authority to issue bonds for re-
registration of Series J State of
Missouri Road Bonds.



July 25, 1946

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Hon. M. E. Morris, Secretary
Board of Fund Commissioners
Jefferson City, Missouri

Dear Sir:

Reference is made to your letter of recent date, re-
questing an official opinion of this office, and reading as
follows:

"The State Treasurer is in receipt of the
following described securities from the
Mercantile-Commerce Bank and Trust Company,
St. Louis, Missouri:

\$80,000 State of Missouri Road Bond
Series J, 4-1/4%, due 6-1-47
Nos. 43, 44, 46, 47, 48, 49,
52, 53 in the amount of \$10,000
each, registered in the name of
Title Insurance & Trust Company,
Corporation, 433 South Spring
Street, Los Angeles, Calif.

\$20,000 State of Missouri Road Bond Series
J, 4-1/4%, due 6-1-47 Nos. 32 and
33, in the amount of \$10,000 each,
registered in the name of Lucy
Smith Battson, Guardian for Timothy
Michael Doheny, a Minor, 714 West
10th Street, Los Angeles, Calif.

"The above described Bonds and Documents were
presented to the Board of Fund Commissioners
at a special meeting of the Board held on the
9th day of July, 1946, whereupon the Secre-
tary of the Board was instructed to inform the

Mercantile-Commerce Bank and Trust Company of St. Louis that there would be a charge of \$1.00 per thousand to re-issue and re-register the above described Bonds.

"The Mercantile-Commerce Bank and Trust Company objected to the charge and cited a clause in a resolution passed by the Board of Fund Commissioners on May 9, 1927, which clause is in words and figures as follows:

\$5,000,000
STATE OF MISSOURI
4-1/4% ROAD BONDS
SERIES J

"These Bonds are coupon bonds, in the denomination of One Thousand Dollars (\$1,000), registerable as to principal, or as to principal and interest, and are exchangeable for fully registered bonds in the denomination of Five Thousand (\$5,000), Ten Thousand Dollars (\$10,000), Fifty Thousand Dollars (\$50,000), and One Hundred Thousand Dollars (\$100,000) which fully registered bonds may again be exchanged for coupon bonds in the denomination of One Thousand Dollars (\$1,000) on payment of One Dollar (\$1.00) per thousand.'

"The Board of Fund Commissioners, upon request from the holder, registers the original bonds of \$1,000 each without charge and also exchanges original \$1,000 Bonds into Bonds of denominations of \$5,000, \$10,000, \$50,000 and \$100,000 without additional charge, however, there is a charge of \$1.00 per thousand to re-convert registered bonds to bearer coupon bonds.

"The question I wish to submit to you is:

'Does the Board of Fund Commissioners have authority to make a charge of \$1.00 per thousand dollars to re-issue and re-register large denomination fully registered bonds?'

The Series J State of Missouri Road Bonds, referred to in your letter of inquiry, were issued by the Board of Fund Commissioners as a part of the authorization conferred on such Board

by an Act of the General Assembly of Missouri found in Laws of Missouri, 1921, Extra Session, pages 126 to 131, inclusive, and Acts amendatory thereof. The various statutory enactments mentioned provide the scheme for the issuance of the bonds authorized by the adoption of Section 44a, Article IV, of the Constitution of 1875.

Section 2 of the act found in laws of Missouri, 1921, Extra Session, page 127, contains the statutory delegation of authority to the Board of Fund Commissioners with respect to its power to promulgate rules and regulations relative to the issuance, registration, conversion and transfer of title to such bonds. The said section reads, in part, as follows:

"As evidence of the indebtedness herein authorized there shall be issued from time to time, as occasion may require, negotiable gold coupon bonds of the state of Missouri, payable to bearer. * * * All bonds issued under and by virtue of this act, shall be in such form as may be prescribed by the board of fund commissioners, * * * The board shall, by resolution, provide a method for registering any of said bonds as the title thereto may be transferred, and for paying the interest thereon as it falls due, and the said board shall exchange registered bonds or bonds payable to bearer whenever requested by the holders thereof. * * *"

In considering the action taken by the Board of Fund Commissioners pursuant to the statutory grant of authority, we must, of course, give due regard to the general rule applicable to the acts of such administrative bodies. We quote from 59 C. J., page 112:

"Powers granted to state administrative agencies must be exercised in a just and reasonable manner, and in conformity with the statutory or constitutional source of the power conferred."

Referring to the Minutes of the Meeting of the Board of Fund Commissioners of the State of Missouri held on the 9th day of May, 1927, we find that a Resolution was on that date adopted by such body, providing for the issuance of the Series J State of Missouri Road Bonds, now under consideration. In providing for the form of the bonds to be issued, the Resolution set forth the following matters:

"This bond may be registered in the name of the owner, the registry to be certified hereon by the Treasurer of the State of Missouri, and the name of the registered owner of this bond to be written in the registration clause on the back hereof, together with the signature of the said Treasurer; after which no transfer shall be valid unless made by the registered owner in person or by attorney on the books of the said Treasurer, and the name of the newly registered owner similarly written on the back of this bond.

The Resolution further provided:

"BE IT FURTHER RESOLVED, that upon the surrender to the State Treasurer of any of the said State of Missouri Road Bonds, Series J, said Treasurer is hereby authorized to issue, in the name of the holder, State of Missouri Road Bonds, Series J, of like tenor, maturity and aggregate amount, in the denomination of FIVE THOUSAND DOLLARS (\$5,000), of TEN THOUSAND DOLLARS (\$10,000), of FIFTY THOUSAND DOLLARS (\$50,000), or of ONE HUNDRED THOUSAND DOLLARS (\$100,000), as may be requested, and the coupon bonds so surrendered and the coupons attached thereto shall be cancelled by the State Treasurer immediately upon the surrender thereof to him. The State Auditor shall prepare registered bonds similar in tenor as hereinafter prescribed and lodge them with the State Treasurer, and upon the surrender of any of the said State of Missouri Road Bonds, Series J, shall insert in such registered bond, or bonds, the name of the registered holder, the date of maturity, the number and such other matters as may be necessary to complete the same, to correspond in other respects to the surrendered coupon bond or bonds, or to correspond to the form of registered bond hereinafter prescribed; * * *

"Upon application of the holders of the registered bonds issued pursuant to the provision of this resolution and the act aforesaid, and upon presentation of such bonds at the office of the State Treasurer in the City of Jefferson

City, Missouri, the State Treasurer is authorized to transfer the same on the books to be kept in his office for that purpose, to such person or corporation as may be designated in the application. * * *

The Resolution further provided:

"BE IT FURTHER RESOLVED, that the State Treasurer shall keep in his office such book or books as may be necessary for the registration of the bonds; * * *"

The Resolution further provided for the form of the registered bonds, incorporating therein the following provisions:

" * * * This registered bond may be transferred by executing a duly acknowledged transfer or assignment thereof and by presentation to the State Treasurer, who shall register the said bond in the name of the transferee.

* * * * *

"Fully registered bonds of the denomination of FIVE THOUSAND DOLLARS (\$5,000), TEN THOUSAND DOLLARS (\$10,000), FIFTY THOUSAND DOLLARS (\$50,000), or ONE HUNDRED THOUSAND DOLLARS (\$100,000) may be surrendered and cancelled and coupon bonds of the denomination of One Thousand Dollars (\$1,000) each issued in lieu thereof on payment to the State Treasurer of ONE DOLLAR (\$1.00) per thousand of the par value thereof."

The Resolution further provided for the advertisement of the Proposal to receive bids for such bonds, and incorporated in the form of such advertisement the following:

"These bonds are coupon bonds, in the denomination of One Thousand Dollars (\$1,000), registerable as to principal, or as to principal and interest, and are exchangeable for fully registered bonds in the denominations of Five Thousand Dollars (\$5,000), Ten Thousand Dollars (\$10,000), Fifty Thousand Dollars (\$50,000), and One Hundred Thousand

Dollars (\$100,000), which fully registered bonds may again be exchanged for coupon bonds in the denomination of One Thousand Dollars (\$1,000) on payment of One Dollar (\$1.00) per thousand."

Pursuant to the Resolution of May 9, 1927, the Series J State of Missouri Road Bonds were offered for sale in accordance with the advertisement, and were thereafter sold.

You will note that at no place in the Resolution, nor in the Act authorizing the issuance and sale of such bonds, has any provision been made for the imposition of a charge for reregistering bonds which have been transferred. It is only upon the reconversion of such registered bonds to coupon bonds that provision for charge has been made. Reference to the entire Resolution and the form of bonds therein provided indicates the reason for this. No item of expense to the State is involved in registering the original coupon bonds, as such registration was made upon the bonds themselves and it was unnecessary that new certificates be issued. Further, the statute authorizing the issuance of the bonds provided for the exchange of the coupon bearer bonds for registered bonds, for which no charge could properly be made. The reason for the charge being imposed for reconversion of registered bonds back to coupon bearer bonds is understandable in the light of the fact that in such event the State of Missouri was necessarily placed to the expense of obtaining new bond forms to be used for the reconversion. This, to us, is the explanation for the charge made for the reissuance of the bond in changed form.

We understand that in the past it has been the practice to actually issue a new certificate when a registered bond was presented disclosing a transfer. We do not believe that this practice was contemplated, however, by either the Act authorizing the issuance of such bonds or by the Resolution providing therefor. We are persuaded to this view by reason of the fact that no specific provision for such charge appears in either the Act or the Resolution, and by further reason of the fact that the entire scheme relating to the transfer of registered bonds does not indicate that a new bond should be issued to the transferee. In the form of registered bond provided in the Resolution, there appears the following:

"KNOW ALL MEN BY THESE PRESENTS: That the State of Missouri acknowledges itself indebted and, for value received, promises to pay to _____ or registered assigns. * * *

The underscored phrase, when considered in the light of the duties imposed upon the State Treasurer by the Act and the Resolution, clearly indicates to us that the transfer of title to such registered bonds is to be recorded solely upon the books of the Treasurer, the bond itself retaining its form as originally issued. This being true, no expense is incurred by the State in recording the transfer and reregistration, and therefore no valid reason exists for the imposition of any charge therefor.

While, as a matter of practice, it may have been more convenient to have actually reissued registered bonds upon transfer, yet, as has been noted above, we do not believe that such action was contemplated by either the Act or the Resolution. We note that in your request for this opinion you have incorporated the statement that the charge is made for reissuing and reregistering, and for that reason we have discussed the propriety of reissuing the registered bonds after transfer.

CONCLUSION

In the premises, we are of the opinion that the Board of Fund Commissioners of the State of Missouri does not have authority to make a charge of \$1.00 per thousand of par value of Series J State of Missouri Road Bonds for the reregistration of such bonds in the name of a transferee thereof.

We are further of the opinion that the Board of Fund Commissioners of the State of Missouri should not reissue such registered bonds upon presentation to said Board of a valid assignment of title thereto, but that such transfer of title and reregistration should be recorded upon the books kept by the State Treasurer, as contemplated by the statute and by the Resolution.

Respectfully submitted,

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

J. E. FLYNN
Attorney General

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