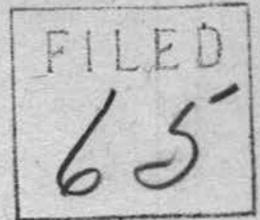


DRAINAGE DISTRICTS: Drainage Districts organized by Circuit Court may issue bonds without vote of two-thirds of voters.

February 16, 1948



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Honorable Walter L. Mulvania
Prosecuting Attorney
Rockport, Missouri

Dear Sir:

This will acknowledge receipt of your letter of recent date in which you request an opinion of this department. Your letter, omitting caption and signatures presents the following problems:

"A rather serious question has been submitted to me bearing upon the extent of the application of Section 26 (a) to 26 (g) of Article VI of the Constitution of Missouri, 1945. In providing a method of incurring an indebtedness in a county, city, incorporated town or village, school district or other political corporation or subdivision by calling an election for that purpose the question arises as to whether or not this impliedly repeals Section 12534 of the Revised Statutes of Missouri, 1939, which provides:

"The Board of Supervisors may, if in their judgment it seems best, issue bonds not to exceed ninety-one per cent of the total amount of the taxes levied under the provisions of section 12511 of this article, in denomination of not less than one hundred dollars, bearing interest from date at a rate not to exceed six per cent per annum * * *".

"Under the foregoing section pertaining to levee districts by circuit courts no election is necessary while the above provision of the Constitution does provide for the calling of an election in order to incur the indebtedness provided therein.

"Under Section 15 of Article X of the Constitution the term 'other political subdivision', as used in that article, does include drainage, sewer and levee districts having the power to tax. I have been unable to find any precedent or decision upon which to base an opinion. I have been asked, as county attorney to pass upon the validity of certain bonds to be issued pursuant to Section 12534 in view of the foregoing Constitutional provision.

"If you can give me any assistance on this question, I would appreciate it."

Section 26 (b) of Article VI of the 1945 Constitution of Missouri provides as follows:

"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 voters 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."

Your opinion request is undoubtedly prompted by an effort on the part of some levee district located in your County to issue bonds. The question first to be considered is whether a levee district is included in the classification set up in the above constitutional provision of "other political corporation or subdivision of the State."

There can be no doubt that drainage districts are public corporations, and as such are political subdivisions of the State of Missouri. See *Kinder vs. Little River Drainage District*, 236 S.W. 848, 292 Mo. 267. This being true, such districts are subject to the restrictions set out in Section 26 (b) of Article VI of the Constitution of Missouri providing that in order for the drainage district to become indebted there must be an approval by two thirds of the qualified voters of such district. The only further consideration is, whether bonds issued in benefit districts against special assessments are an indebtedness.

In the case of State ex rel Drainage District vs. Thomson, 41 S.W. (2d) 941, 328 Mo. 728, the Supreme Court of this State held as follows:

"We have repeatedly held that bonds issued in benefit districts against special assessments are not indebtedness within the meaning of Section 12 of Article 10 of the Constitution of Missouri. State ex rel Inf Gentry vs Curtis et al, 319 Mo. 333, 334, 4 SW (2) 467, 473; Birmingham Drainage District vs R.R. Co. 266 Mo. 60, 68, 178 SW 893; Embree vs Road District 257 Mo. 593, 610, 166 SW 282; Houck vs Drainage District, 248 Mo. 373, 383, 154 SW 739."

It will be noted that reference is made in the above quotation to Section 12, Article 10 of the former Constitution which is an obsolete constitutional provision and which has been repealed. However, a like restriction is embodied in Section 26 (b) of the Constitution of Missouri for 1945.

Since the bonds issued by this type of political subdivision would not be an indebtedness under the ruling of the Supreme Court of Missouri, the action of the supervisors of a drainage district in issuing such types of bonds as they are empowered to do it under Section 12534, R.S. Mo. 1939, is not violative of Section 26 (b) of Article VI of the Constitution of Missouri.

CONCLUSION

It is, therefore, the opinion of this department that the Board of Supervisors of the drainage district may, in their judgment issue bonds without the necessity of first obtaining the approval of two thirds of qualified voters of their drainage district.

Respectfully submitted,

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APPROVED:

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