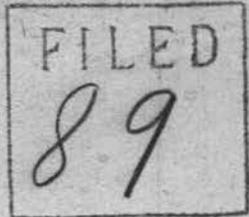


COUNTY COURTS: Proper procedure for selling bonds under Sec.
BONDS : 3300, page 600, Laws of Missouri, 1945.



April 20, 1948

H-21

Honorable D. D. Thomas, Jr.
Prosecuting Attorney
Carroll County
Carrollton, Missouri

Dear Mr. Thomas:

We are in receipt of your request for an opinion. Restating your request, for sake of brevity, you inform us that the County Court recently voted \$100,000.00 in bonds for construction, re-construction and repairment of public bridges in your county under Section 8606, page 1478, Laws of Missouri, 1945, and Section 3300, page 600, Laws of Missouri, 1945, and you inquire:

1) If the County Court may direct the County Treasurer to sell the bonds at private sale, at not less than their face value, without first causing the County Treasurer to advertise the sale of such bonds at public sale.

2) May the County Treasurer reject all bids submitted under advertisement, at the direction of the County Court and thereupon sell such bonds at private sale, upon order of the County Court, even though the person or corporation to whom said bonds might be sold at private sale does not offer a bid or does not make a bid, which, as a matter of fact, is the lowest bid.

Section 8608, page 1478, Laws of Missouri, 1945, authorizes a County Court to issue bonds for construction, re-construction, improvement, maintenance and repairs of public roads, highways, bridges and culverts in an amount provided by law. Said Section 8608, reads as follows:

"The county courts of the counties of this state are hereby authorized to issue bonds for and on behalf of their

respective counties for the construction, reconstruction, improvement, maintenance and repair of any and all public roads, highways, bridges and culverts within such county, including the payment of any cost, judgment and expense for property, or rights in property, acquired by purchase or eminent domain, as may be provided by law, in such amount and such manner as may be provided by the general law authorizing the issuance of bonds by counties. The proceeds of all bonds issued under the provisions of this section shall be paid into the county treasury where they shall be kept as a separate fund to be known as the 'Road Bond Construction Fund' and such proceeds shall be used only for the purpose mentioned herein. Such funds may be used in the construction, reconstruction, improvement, maintenance and repair of any street, avenue, road or alley in any incorporated city, town or village if such street, avenue, road or alley or any part thereof shall form a part of a continuous road, highway, bridge or culvert of said county leading into or through such city, town or village."

The 63rd General Assembly also repealed Section 3300, R.S. Mo. 1939, and enacted Section 3300, page 600, Laws of Missouri, 1945, in lieu thereof, which prescribes the procedure for selling said bonds, and reads, in part:

"The county treasurer of the county issuing such bonds is hereby authorized to sell and dispose of all such bonds in the manner hereinafter provided. Said treasurer, under the direction of the county court, shall cause notice to be published once per week for two consecutive weeks in one or more newspapers of general circulation published in such county, or, if there is no newspaper published in such county, then by posting written or printed handbills in at least two public places in the county, that sealed proposals for the purchase of all or a part of said bonds as may appear

in said notice will be received at his office, and that the same will be opened by him in the presence of the county court on the day and hour mentioned in the notice. Said treasurer may, under the direction of the court, reject any or all bids that the court may not deem satisfactory as to price or otherwise, and in case of rejection, he may again advertise and sell said bonds in the same manner; provided, however, if the county court shall so order the treasurer may sell said bonds at not less than their face value, at private sale, and report the same to the court at the next term thereafter. * * *

There are two well established rules of statutory construction to keep in mind in rendering this opinion. One of the cardinal rules of construction is to ascertain, if possible, from words used, the legislative intent in enacting a statute, and give it that effect. (See: Donnelly Garment Company vs. Keitel et al., 193 S.W. (2d) 577, 354 Mo. 1138. Also, Wentz vs. Price Candy Company, 175 S.W. (2d) 852, 352 Mo. 1.) It has also been held that under certain circumstances, a proviso in an Act should be construed with reference to the subject-matter of the sentences of which it forms a part. In United States vs. Bernays, 158 Fed. Rep. 792, l.c. 795, 86 C.C.A. 52, the Court said:

"* * * This conclusion is in harmony with the general rule that a proviso should be construed with reference to the subject-matter of the sentence of which it forms a part unless it clearly appears to be designed by the Legislature for a broader or more independent operation. Suth. Stat. Const. Sec. 223; Savings Bank v. United States, 19 Wall. 227, 236, 22 L. Ed. 80; Boston Safe Deposit & Trust Co. v. Hudson, 68 Fed. 758, 15 C.C.A. 651. * * *"

Looking to the wording of Section 3300, supra, we find the first and second sentences provide that the County Treasurer shall, under direction of the County Court, give

notice in the county by publishing in a newspaper of general circulation, or if there be no newspapers that can meet the necessary requirements, then by posting a notice, that sealed proposals for purchase of all or a part of the bonds will be received in his office, and said proposals will be opened on the date mentioned, before the County Court. The third sentence in said Section seems to be the one in question, and authorizes the County Treasurer, under the direction of the County Court to reject any and all bids that the Court may not deem satisfactory as to price or otherwise, and if said bid, or bids, are rejected, the County Treasurer may advertise and sell bonds in the same manner, which refers to the manner of sale mentioned in the first and second sentences. It will be noticed that in second sentence of said Section, the General Assembly used the word "shall" when referring to advertising the sale of bonds, which clearly makes it mandatory upon the County Treasurer to advertise the sale of said bonds. However, it will be further noticed, that the General Assembly in drafting the third sentence of said Section used the word "may", with regard to advertising and selling said bonds in case the first bids are rejected, which indicates that the matter is left to the discretion of the County Treasurer. In State vs. Wymore, 119 S.W. (2d) 941, l.c. 944, 343 Mo. 98, the Court said:

"Respondent argues that the remedy provided by this statute is an exclusive remedy against respondent for misconduct. On reading the article it will be noted that the words 'may' and 'shall' are used many times in the several sections. They were used advisedly and must be given their usual and ordinary meaning. It is the general rule that in statutes the word 'may' is permissive only, and the word 'shall' is mandatory. * * *".

(See also: Lansdown vs. Paris, 66 F. (2) 939).

Considering that the Legislature used the word "may" instead of "shall" in the third sentence, relative to the method of advertising for the sale of bonds upon rejection of former bids, along with the rule of statutory construction hereinabove announced in United States vs. Bernays, supra,

Honorable D. D. Thomas, Jr. -5-

that provisos should be construed with reference to the subject-matter of the Section of which it forms a part, furthermore, that said proviso in question is a part of the third sentence, and authorizes the County Treasurer, when ordered by the County Court, to sell said bonds at not less than their face value at private sale, clearly indicates to us that the legislative intent was that said bonds should first be advertised as indicated in the first and second sentences of Section 3300, supra, and in case the bid, or bids, are properly rejected, then the County Treasurer may again advertise in the same manner, or if the County Court shall order, he may, in lieu of the advertisement a second time, sell said bonds at not less than their face value at a private sale, as provided in the third sentence of said Section.

CONCLUSION

Therefore, it is the opinion of this Department in answer to your first question:

The County Court cannot in the first instance, prior to any bids being rejected, direct the County Treasurer to sell bonds at private sale at not less than the face value of said bonds; that the notice of sale must first be published in accordance with the second sentence of Section 3300, supra.

In answer to your second question:

If the County Court shall reject the bids on the grounds provided in Section 3300, supra, and the County Court shall so order, the County Treasurer may then sell the bonds at private sale at not less than their face value.

Respectfully submitted,

APPROVED:

AUBREY R. HAMMETT, Jr.
Assistant Attorney General

J. E. TAYLOR
Attorney General

ARH:ir

JTB