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SPRINGFIELD

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FILE NO. S-370

COUNTIES AND COUNTY BOARDS:
Authority of County Board of
Supervisors to Issue Interest-
bearing Orders not Payable on
Demand for Purpose of Remodeling
Court House

Honorable Henry D. Sintzenich
State's Attorney
McDonough County
Macomb, Illinois 61455

Dear Mr. Sintzenich:

I have your letter in which you state:

"The County Board of Supervisors of McDonough County wish to remodel our County Courthouse. They wish to do this project without the necessity of issuing bonds to pay for this construction."

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"In an Attorney General Opinion No. 107 dated October 10, 1961, which appears in 1961 Attorney General Opinion at page 264 the opinion set forth

that a county can issue interest bearing orders upon the county treasurer which are not payable on demand and are not anticipation warrants and which are payable on certain dates in the future. My question is, therefore;

1. Is this opinion the correct status of the law so that the county may issue these type obligations for the repair and renewal of our courthouse, and
2. What would be the proper form for these orders, and
3. What would be the maximum time within which orders issued should be retired?

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I have considered the opinions of one of my predecessors found in Attorney General's Opinion 1961, page 264 and am unable to concur completely with the conclusions expressed therein.

A county is a creature of statute and has no powers except those specifically conferred upon it by statute or such powers as are necessary to carry out the powers so conferred. LeFevre v. County of Lee, 353 Ill. 30.

The specific authority for a County Board of Supervisors to provide and maintain a court house is set forth in

section 26 of "An Act to revise the law in relation to counties" approved March 31, 1874 as amended", which reads in part:

"§ 26. It shall be the duty of the county board of each county:

"First--To erect or otherwise provide when necessary, and the finances of the county will justify it, and keep in repair, a suitable court house, jail and other necessary county buildings, and to provide proper rooms and offices for the accommodation of the county board, State's attorney, county clerk, county treasurer, recorder and sheriff, and to provide suitable furniture therefor. But in counties not under township organization, no appropriations shall be made for the erection of public buildings, without first submitting the proposition to a vote of the people of the county, and the vote shall be submitted in the same manner and under the same restrictions as provided for in like cases in section 27 of this act; and the votes therefor shall be 'For taxation,' specifying the object, and those against shall be 'Against taxation,' specifying the object.

* * * * *

"Sixth--To provide proper rooms and offices, and for the repair thereof, for the accommodation of the circuit court of the county and for the clerks for such court, and to provide suitable furnishings for such rooms and offices, and to furnish fire proof safes, and the repair thereof, for the offices of the clerks of the circuit court of the county. The court rooms

and furnishings thereof shall meet with reasonable minimum standards prescribed by the Supreme Court of Illinois. Such standards shall be substantially the same as those generally accepted in court rooms as to general furnishings, arrangement of bench, tables and chairs, cleanliness, convenience to litigants, decorations, lighting and other such matters relating to the physical appearance of the court room." (Ill. Rev. Stat. 1969, ch. 34, par. 432.)

This duty clearly authorizes the remodeling of the McDonough County Court House which is contemplated.

The case of Jackson County v. Rendleman, 100 Ill. 379, which was relied upon in the Attorney General's Opinion cited above appears to be authority for the issuance of interest-bearing county orders. However, the case is silent upon whether the county orders under consideration were payable on demand or at a fixed time in the future. Further, the Court was careful to point out that the interest-bearing feature of the orders was an important factor in determining the bid price for the work to be done inasmuch as the orders were used directly for payment to the contractor.

In Frankford Real Estate, Trust & S.D. Co. v. Jackson County, 98 F. 942, the United States Circuit Court of Appeals

for the Seventh Circuit held that interest-bearing county orders not payable on demand were properly issued even in the face of sections 1 and 2 of the Act of 1879 (Laws 1879, p. 78, §§ 1, 2, since repealed) which provided only for issue of warrants payable on demand and for tax-anticipation warrants. This case at best is only persuasive authority, particularly since it was decided while the doctrine of Swift v. Tyson (16 Pet. 1) was still in effect and Federal Courts had great latitude in interpreting state law. Further, I can discover no instance where this case has been cited as authority in either State or Federal Courts.

In Coles County v. Goehring, 209 Ill. 142, while holding that the holders of interest-bearing warrants not payable on demand could not recover on the warrants, they could recover in quasi-contract for the value of the work performed. The reasoning was that the warrants in question did not comply with the statutory provisions covering tax-anticipation warrants in that they did not specify the taxes from which they were to be paid and were therefore void. While the Coles County case does not specifically over-rule Jackson County v. Rendleman,

(supra), it casts serious doubt as to whether a county may issue an interest-bearing warrant not payable on demand without complying with the requirements for tax-anticipation warrants as set forth in sections 2 and 3 of "An Act to provide for the manner of issuing warrants, etc. approved May 22, 1929 as amended". (Ill. Rev. Stat. 1969, ch. 146 1/2, pars. 2, 3.)

It should also be pointed out that section 2 of that Act expressly provides that "whenever a county * * * does not have sufficient money in its treasury to meet all necessary expenses and liabilities thereof, including all expenses for building purposes," it may issue tax-anticipation warrants.

I direct your attention to "An Act authorizing certain counties to levy an additional tax for the housing of county offices and departments approved July 13, 1955 as amended".

Section 1 of that Act provides as follows:

"§ 1. Upon the adoption of a resolution approved by not less than two-thirds of the members of the board, the county board of any county having less than 80,000 inhabitants may levy an annual tax of not to exceed .04% of full, fair cash value, as equalized or assessed by the Department of Revenue, on all taxable property of the

county, for the purpose of providing housing for county offices and departments, Such tax shall be levied and collected in like manner as the general taxes of the county and shall be paid into the 'County Offices Fund' which is hereby created. Such tax shall be in addition to all other taxes which the county is or may be authorized to levy and shall not be included in any limitation of rate or amount but shall be excluded therefrom and in excess thereof. Such tax shall not be levied for more than 5 years, except that if the same procedure is followed as is provided in this Act for the original levy, the tax may be levied for an additional period not to exceed 5 years." (Ill. Rev. Stat. 1969, ch. 34, par. 2154.)

While this Act has not been construed in any reported case, it appears that it authorizes a county board to levy taxes over a period not to exceed five years and therefore to issue tax-anticipation warrants due as the taxes levied for a particular year are collected, subject, of course, to the annual levy of taxes, the statutory requirements with respect to such warrants including the fact that anticipation warrants may not be issued until the tax is actually levied, and subject further to the possible referendum in accordance with section 2 of the Act.

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In conclusion, it is my opinion that changes in the various statutes relating to counties over a period of many years have rendered the validity of interest-bearing county orders or warrants not payable on demand and which are not anticipation warrants highly questionable. For this reason, I find it unnecessary to reach your questions concerning the form and term of such warrants.

Very truly yours,

ATTORNEY GENERAL