

ROADS AND HIGHWAYS: OVERSEERS: CONTRACTING FOR ROAD MACHINERY:
Road overseers of common road districts are not authorized to contract for road machinery nor to incur obligations in excess of income for current year.

November 22, 1941

Hon. James L. Paul
Prosecuting Attorney
Pineville, Missouri



Dear Mr. Paul:

This is in reply to your request of November 17, for an opinion from this department based on the following statement of facts:

"I would like to have your opinion on the following question: May a road overseer in a common road district issue warrants which exceed the revenue for that particular district in any one year? This question has arisen where a road overseer of a common road district has contracted and agreed to buy and purchase road machinery; the payment of which together with the actual expense in road repairs has exceeded the income for that year."

Your question seems to involve two questions; (1) the authority of a road overseer to contract for road machinery, and (2) to obligate the district for an amount in excess of the income of the district for the year in which such obligation is entered into.

On the first question, the office of road overseer is an office which is created under the statutes and we must look to the statute to ascertain his powers and duties. Under Article 3 of Chapter 46, we find that the office of road overseer is created. Section 8514 of this article gives the county courts jurisdiction over the roads in their particular county. Under Section 8518, the road overseer is required to give a bond to the county court. One of the conditions of the bond is that he will account to the highway engineer for tools and machinery and property belonging to the county or road district. Reviewing the remaining sections of this article, it will be seen the lawmakers have at no time authorized the road overseer to enter into contracts for road machinery for the district

and bind the county for the payment thereof. Section 2480 R. S. Mo. 1939, provides as follows:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

Under this section, it would seem that the lawmakers intended the county court to control and have management of the machinery of the road district and have authority to purchase same. This rule is further stated in Volume 29 C. J., page 574, Section 299 in the following language.

"Under the rule that they are not agents for the local authorities, contract obligations can be imposed by highway officers on local authorities only so far as they are authorized to incur such obligations. * * * *"

And also in Section 300 on page 575, the court said:

"Ordinarily highway officers have no power to incur or create indebtedness, except, perhaps, in certain cases of emergency. They have no authority to issue certificates of indebtedness, or to purchase on credit. * * * *"

On the question of incurring indebtedness in excess of the revenue for the current year, we find that the Supreme Court of this state, by an opinion dated December 22, 1933, in the case of Hawkins et al. v. Cox et al, 66 S. W. (2d) 539, had before it the question of the authority of the commissioners of a special road district to incur an indebtedness in excess of the revenue for the year in which the contract was made. In that case the commissioners had purchased road machinery, the payment for which was to be made over a period of years subsequent thereto. At l. c. 543, the court said:

"The question presented here is whether the road district in question exceeded its powers in this respect, under its then financial condition, in making the contract of purchase just referred to, and, if so, to what extent. We think the first question must be answered in the affirmative. Municipal corporations, such as are special road districts, are by our Constitution placed on what has been termed a cash basis. This has been accomplished by the provisions of section 12, article 10, of the Constitution, which provides that 'no county, city, town, township, school district or other political corporation or subdivision of the state shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose.' The plain meaning of this constitutional provision is that any such municipal corporation may spend or contract to spend (become indebted) 'in any (calendar) year the income and revenue provided for such year,' but beyond that it cannot go in creating a debt for any purpose or in any manner, except by consent of two-thirds of the voters. This was so held in *Book v. Earl*, 87 Mo. 246, where this court said: 'The contracting of a debt in the future, by the county in any manner or for any purpose, in any one year exceeding the revenue which the tax authorized to be imposed would bring into the treasury for county purposes for such year, unless expressly authorized to do so by the assent of two-thirds of the voters,' is prohibited. * * * * * The evident purpose of the framers of the constitution and the people who adopted it was to abolish in the administration of county and municipal government, the credit system and establish the cash system by limiting the amount of tax which might be imposed by a county for county purposes, and limiting the expenditures in

any given year to the amount of revenue which such tax would bring into the treasury for that year. Section 12, supra, is clear and explicit on this point. Under this section the county court might anticipate the revenue collected, and to be collected, for any given year, and contract debts for ordinary current expenses, which would be binding on the county to the extent of the revenue provided for that year, but not in excess of it."

"* * * * In Trask v. Livingston County, 210 Mo. 582, 109 S. W. 656, 658, 37 L. R. A. (N. S.) 1045, the county in September, 1889 contracted to have a bridge built to be paid for in a fixed amount when completed. It was not accepted by the county till in May 1890, when warrants were issued for its payment out of the revenues for 1890. The court said: 'When the county became indebted on these bridge contracts must be determined by the "income and revenue provided," which under the constitution, must be looked to for the payment of such indebtedness, and it was the "income and revenue provided" for the year 1889, which the county court was authorized to appropriate for that purpose, and not the revenue for the year 1890, which at the date of the contract for the building of said bridges, had never been assessed, levied, or collected. * * * "

"The contract for the purchase of and payment for this road machinery made in February 1928, is void at least to the extent it attempted to obligate the district for payments beyond the cash payment made at the time and the amount to be paid out of the revenues provided for 1928. Anderson v. Ripley County, 181 Mo. 46, 65, 80 S. W. 263."

From the foregoing statement of the court it very clearly appears that the road district officers would not be authorized to enter into a contract for the payment of money which would be in excess of the taxes for that purpose for that year.

Hon. James L. Paul

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CONCLUSION

From the foregoing it is the opinion of this department that a road overseer is not authorized to enter into a contract for machinery for the district, the payment of which, together with the actual expense of road repairs, exceeds the income of that year.

Respectfully submitted,

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APPROVED:

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