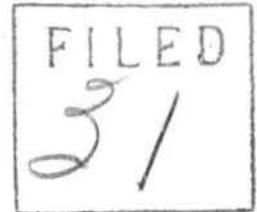


ROADS AND BRIDGES, (B COUNTY) County court may ~~suspend~~ funds for
COURTS;) constructing a road on land occupied
by county hospital.



May 6, 1949

Honorable Ronald J. Fuller
Prosecuting Attorney
Phelps County
Rolla, Missouri

5-14

Dear Mr. Fuller:

Your letter at hand requesting an opinion of this department which, in part, reads:

"Would appreciate an opinion from the Attorney General Department for the State of Missouri based upon the following facts and question:

Facts--A county hospital for Phelps County, Missouri is to be built within the near future at Rolla, Missouri. The deed to the tract of land upon which the hospital will be built is held in the name of the Trustees of the Phelps County Public Hospital. The Trustees of the hospital desire that the Phelps County Court expend county funds for the construction of a drive on the hospital premises.

Question--May a County Court expend county funds for a road on land, the title of which is in trustees of a county public hospital."

We assume that the construction of the county hospital in Phelps County is being accomplished in the manner as provided by Article IV, Chapter 126, R. S. Mo. 1939, and those sections repealed and reenacted relating to the establishing and maintaining of county hospitals. If such is the case, the county hospital is a project of the county for public purposes, and the hospital and land on which it is located is the property of the county which by law is controlled, managed and maintained by the hospital trustees, thus, Section 15192, Laws of Mo. 1945, page 984, in part, provides:

"The county courts of the several counties of this state are hereby authorized, as provided in this Article, to establish, construct, equip,

improve, extend, repair and maintain public hospitals, and may issue bonds therefor as authorized by the general law governing the incurring of indebtedness by counties. * * *"

And, Section 15193, Laws of Mo. 1945, page 984, and Section 15194, Laws of Mo. 1945, page 985, provide for the appointment and election of the hospital trustees and endows them with the power to supervise and maintain the county hospitals.

Consequently, in considering the question of the county court appropriating funds of the county for the construction of a road on land that is to be the situs of the county hospital, it is our thought that we are not confronted with the question whether or not the county court would be granting public money to a corporation, association or individual in violation of Sections 23 and 25, Article VI, of our present Constitution.

The general rule regarding the construction, improvement and repair of roads or highways is given in 29 C. J., page 583, as follows:

"The construction, improvement, and repair of highways is regulated largely by statute, the general rules relating to statutes being applicable, as to constitutionality and construction, which must be reasonable. * * *"

It is, therefore, necessary that we look to the statutes to determine whether the county has the right to expend funds for the construction of a road on the land to be occupied by the county hospital.

Section 8527, Laws of Mo. 1945, page 1479, provides for the setting up of a public road and bridge fund and reads as follows:

"In addition to other levies authorized by law, the county court in counties not adopting an alternative form of government and the proper administrative body in counties adopting an alternative form of government, in their discretion may levy an additional tax, not exceeding thirty-five cents on each one hundred dollars assessed valuation, all of such tax to be collected and

turned into the county treasury, where it shall be known and designated as 'The Special Road and Bridge Fund' to be used for road and bridge purposes and for no other purpose whatever; provided, however, that all that part or portion of said tax which shall arise from and be collected and paid upon any property lying and being within any special road district shall be paid into the county treasury and four-fifths of such part or portion of said tax so arising from and collected and paid upon any property lying and being within any such special road district shall be placed to the credit of such special road district from which it arose and shall be paid out to such special road district upon warrants of the county court, in favor of the commissioners or treasurer of the district as the case may be; Provided further, that the part of said special road and bridge tax arising from and paid upon property not situated in any special road district and the one-fifth part retained in the county treasury may, in the discretion of the county court, be used in improving or repairing any street in any incorporated city or village in the county, if said street shall form a part of a continuous highway of said county leading through such city or village."

In reading the above section, it appears that a portion of the tax moneys collected and designated as the "Special Road and Bridge Fund" is placed to the credit of special road districts and paid out to them on warrants. According to the statute, this amount is four-fifths of the tax collected on property lying within the special road districts, and this tax money can only be returned to the special road districts in which they are collected. State ex rel. v. Vinson, 198 S. W. (2d) 232; Rolla Special Road District v. Phelps County, 116 S. W. (2d) 61, 342 Mo. 549; Hawkins v. Cox, 66 S. W. (2d) 539, 334 Mo. 640; State ex rel. v. Burton, 222 S. W. (2d) 844, 283 Mo. 41.

However, the remaining one-fifth not returned or paid to the special road districts and all of the tax moneys collected on property not lying in the special road districts is retained by the County Treasurer in the "Special Road and Bridge Fund," and as the statute provides "to be used for road and bridge purposes and for no other purpose whatever."

We, therefore, believe that the county court has the discretionary power to disburse the remaining tax moneys in the "Special Road and Bridge Fund" so long as they are confined to the use prescribed by the statute, to wit: for road and bridge purposes.

In *Green City v. Martin*, 237 Mo. 474, the Supreme Court was considering a similar statute in connection with a constitutional amendment and its application to a county under township organization. At l. c. 484, the court said:

" * * * The sections speak of the tax as one over which, touching its levy, the county or township has a discretionary power. Therewith they connect themselves in words and thought directly with the amendment. Moreover, section 11,770 is the mandate (and only mandate) of the lawmaker defining the officials into whose hands the constitutional tax passes, and who are charged with the disbursement thereof in a way to subserve the constitutional purpose. It ordains, inter alia, that 'all moneys arising therefrom shall be by the county court or township board of directors appropriated, set apart and kept . . . and . . . used for road and bridge purposes, and for no other purposes whatever.' That language rivets the statute to the constitutional amendment, and, in its administrative details, points to the township board as the legal custodian and disbursing officer of the special fund. * * *"

From the opinion request submitted we are not definitely informed of the extensiveness of the proposed road to be constructed. It would seem that the building of driveways, walks, and ramps connecting with the hospital building that would facilitate its efficient operation and which would afford adequate means of ingress and egress to the building proper would normally be constructed by the contractor erecting the hospital and would be a part of the normal and usual construction to be performed under the contract.

CONCLUSION.

However, it is the opinion of this department that if the construction of a public road upon the land to be occupied by the

May 6, 1949

county hospital is contemplated, and for the general public use, the county court at its discretion may use the tax moneys in the "Special Road and Bridge Fund" not credited to special road districts, if such fund has been created as provided in Section 8527, Laws of Mo. 1945, page 1479, for the purpose of constructing said road. To use said funds for such a project would be a use falling within the ambit of the statute, i.e., for road and bridge purposes.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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