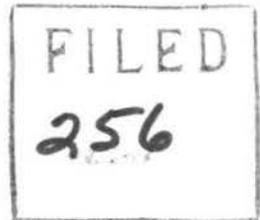


December 6, 1973

OPINION LETTER NO. 256
Answer by letter-Wieler



Honorable William S. Brandom
Prosecuting Attorney
Clay County Courthouse
Liberty, Missouri 64068

Dear Mr. Brandom:

This is in response to a request for an opinion by your assistant, Mr. P. Wayne Kuhlman, as to whether or not the Clay County court can expend funds collected from the special road and bridge tax authorized by Section 137.555 for the improvement and widening of Oak Street within the city of Gladstone and the "Oak villages."

It is our information that Clay County is a county of the second class with a population of 123,000 people. Oak Street enters Clay County from the south as a part of U.S. Highway Alternate 169. At this point, it is entirely within the city of Kansas City. Splitting off from U.S. Highway Alternate 169 while still within the city limits of Kansas City, Oak Street runs straight north paralleling U.S. Highway 169. Leaving the city limits of Kansas City, Oak Street becomes the border street between the cities of Gladstone and the villages of Oaks, Oakwood, Oakwood Park, and Oakview. The respective borders of Gladstone and the "Oak villages" run to the center of the street. North of Oakview, Oak Street becomes a city street within the city of Gladstone. North of Gladstone, Oak Street again becomes a city street within the city of Kansas City at which time it merges into U.S. Highway 169. At no point along the way does the street ever enter into any unincorporated area of the county. The city of Gladstone lies within a special road district, the boundaries of which are coterminous with the city. The district is empowered, with the consent of the city, to expend all of its funds within the city pursuant to Section 233.103, RSMo 1969. The "Oak villages" are not within any special road district.

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We have been informed that the county court in Clay County has not established a county urban road system under the provisions of Section 137.557, RSMo 1969, so our discussion will be limited to the provisions of Section 137.555, RSMo 1969, Section 137.556, RSMo 1969, and the limitations placed upon these sections by the provisions of Section 50.550, RSMo 1969, of the County Budget Law.

Section 137.555 provides 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 our opinion, this section would not authorize the expenditure of any funds derived from the special road and bridge tax by

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the county court on Oak Street within the city limits of the city of Gladstone and the "oak villages" for the reason that Oak Street does not form a part of a continuous highway of Clay County leading through these incorporated areas. Enclosed is a former opinion of this office which discusses the term "continuous highway of said county" as it appears in the statute (Opinion No. 62 issued January 10, 1955, to the Honorable Harry J. Mitchell). In that opinion, we held that a street must be a connecting link between two portions of a county highway which together form an uninterrupted line of traffic flowing through a city in order to be considered a continuous highway of the county. Oak Street does not meet this definition. It enters Gladstone and the "Oak villages" from the city of Kansas City and it exits Gladstone to the north into the city of Kansas City. At no time does it enter an unincorporated area of Clay County.

However, the provisions of Section 137.556, RSMo 1969, also apply to this situation. Section 137.556 provides as follows:

"1. Notwithstanding the provisions of section 137.555, any county of the second class which now has or may hereafter have more than one hundred thousand inhabitants shall expend not less than twenty-five percent of the moneys accruing to it from the county's special road and bridge tax levied upon property situated within the limits of any city, town or village within the county for the repair and improvement of existing roads, streets and bridges within the city, town or village from which such moneys accrued.

"2. The city council or other governing body of the city, town or village shall designate the roads, streets and bridges to be repaired and improved and shall specify the kinds and types of materials to be used.

"3. The county court may make and supervise the improvements or the city, town or village, with the consent and approval of the county court, may provide for the repairs and improvement by private contract and, in either case, the county court shall pay the costs thereof out of any funds available under the provisions of this section."

Section 137.555 provides that eighty percent of the special road and bridge tax collected upon property lying within the spe-

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cial road district is to be returned to that road district. Section 137.556, sub. 1, requires a second class county containing more than one hundred thousand inhabitants to expend not less than twenty-five percent of the special road and bridge tax collected upon property lying within any city, town or village upon the streets and bridges within said city, town or village, notwithstanding the provisions of Section 137.555. In our opinion, the latter section is controlling. Therefore, not more than seventy-five percent of the tax collected from the property lying within the city of Gladstone and the special road district whose boundaries are coterminous with the city should be turned over to the district under the provisions of Section 137.555. At least twenty-five percent should be expended upon streets within the city of Gladstone pursuant to the provisions of Section 137.556. That part of Oak Street which lies wholly within the city of Gladstone would thus be subject to this provision.

In making these expenditures within the city of Gladstone, the county is prohibited by the provisions of Section 50.550, RSMo 1969, of the County Budget Law, from expending county funds for the repair and upkeep of bridges in any special road district. Section 50.550, in pertinent part, provides:

" . . . The budget shall contain adequate provisions for the expenditures necessary . . . for the repair and upkeep of bridges other than on state highways and not in any special road district, . . ." (Emphasis added)

In Opinion No. 309 issued August 28, 1969, to the Honorable Ralph B. Nevins, we held that this provision would not allow a county court to expend money derived from either the special road and bridge tax levy or the general revenue tax on the repair and upkeep of bridges lying within a special road district (copy of that opinion enclosed).

An additional problem arises as to that portion of Oak Street which forms the boundary between the city of Gladstone and the "Oak villages." Section 137.556 provides that not less than twenty-five percent of the special road and bridge taxes collected from property lying within any city, town or village shall be expended for the improvement and repair of existing roads, streets, and bridges within the city, town or village from which such moneys accrue. In Town of Alexandria v. Clark, 231 S.W.2d 622, 623-624 (Mo. 1950), the Missouri Supreme Court said that the term "within" could have a variety of meanings depending upon the context in which it was used, but that in normal usage the term meant "inside the bounds" or "not without." In the absence of any indication to the contrary, we must conclude that the legislature intended such a meaning here.

Honorable William S. Brandon

Accordingly, the provisions of Section 137.556 cannot apply to that portion of Oak Street which forms the boundary between Gladstone and the "Oak villages" inasmuch as said street does not lie wholly within the territorial limits of any of these municipalities.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 62
1-10-55, Mitchell

Op. No. 309
8-28-69, Nevins