

ROADS AND BRIDGES:

Refunds under Sections 8127 and  
8128, R.S. Mo. 1929, discussed.

10-14

October 11, 1933.



Mr. W. Evans,  
2006 Grand Avenue,  
Kansas City, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"I am advised that a refund of \$30,000.00 is being made to the Parkville Special Benefit Assessment Road District.

There seems to be some question as to whether this money must be returned in cash to the property owners who were taxed or whether it shall be used for building more roads. I understand that the Attorney General has rendered an opinion that this money can not be returned in cash to the property owners.

Will you please advise me if such an opinion was rendered? Also, I would like to know if this money cannot be returned in cash, if it can be used to build other roads in this particular road district."

Section 8127, R. S. Mo. 1929, provides as follows:

"Counties or other civil subdivisions shall be reimbursed for work done in constructing such part of a road or roads including bridges, except bridges over the Missouri, Mississippi and the navigable portions of the Osage and Gasconade rivers, which may become a part of the state highway system to the extent of the value to the state at the time taken over, due consideration being given to the type of road the state would have constructed had such road not already been constructed, provided that all reimbursements to the amount of six thousand dollars per mile shall be deducted from the apportionment made to each county, and all reimbursements in excess of \$6,000 per mile shall be made out of the one-third of the state road funds set apart and available for the construction of a higher typed road than properly bound gravel road. Any portion or all of such reimbursement shall be made either in the form of additional roads, or in cash, at the election

of the authorities of the county or civil subdivision to which reimbursement may be due. If the authorities of the county or civil subdivision elect to have such reimbursement made in the form of additional roads, such roads shall be constructed in such county or within such civil subdivision connecting with the state highway system and constructed under state supervision; or, all or part of said sum may be used to construct a higher type road than that proposed by the commission as part of the state highway. If the authorities of the county or civil subdivision elect to have all or any part of such reimbursement made in cash, all or any portion of such reimbursement made in cash may be used for the purchase of rights-of-way for state highways within such county or civil subdivision. Where money has been raised or set apart for the construction of roads which are designated as state highways and contracts have been entered into requiring expenditure of said funds, and in all cases where said roads are under construction at the time this article shall take effect, the same may be completed; and the counties or civil subdivisions wherein said roads are constructed or to be constructed, shall have all the benefits of this section. Where two or more counties or minor subdivisions or minor subdivisions in two or more counties have constructed a road which is taken over as a part of the state highway system and reimbursement is to be made under the provisions of this section, reimbursement shall be made to each county or minor subdivision in proportion to the funds contributed by each in the construction of the roads taken over, and those constructed therewith in each county or in the territory of the minor subdivision of each county. Providing that the county or other subdivision thereof shall not receive as refund under this article a greater sum than has been expended on said section of road so taken over by the state, by the said county or subdivision thereof."

Section 8128, R. S. No. 1929, provides as follows:

"Any county or other civil subdivision having funds of its own arising from a road tax or bond issue may expend said funds in the building of the state road system within said county or other civil subdivision as designated in this article; provided the construction of said roads is under the supervision and according to the plans of the highway department as provided for in this article, and all money so expended by any county or other civil subdivision shall, to the extent of the apportionment of such county or other civil subdivision herein provided for, be repaid to such county or other civil subdivision, as soon as funds arising from the state road fund are available for that purpose. Requisition therefor shall be made by the county court and shall be honored

by the proper officer of the state highway department."

Section 8127 specifically provides that any portion or all of such reimbursement shall be made either in the form of additional roads or in cash, at the election of the county or civil subdivision to which reimbursement may be due. Section 8128 provides that all moneys expended by any county or civil subdivision, according to the plans of the highway department, shall be repaid to such county or civil subdivision. Under Section 8127, if the authorities elect to have reimbursement made in cash, such reimbursement may be used for the purpose of rights-of-way for state highways within such county or civil subdivision. Section 8127 deals with roads that were in existence or had been built and were afterwards taken over by the highway department, while Section 8128 deals with roads which have been built under the Centennial Road Law under the supervision and according to the plans of the highway department. In the first section it is optional as to whether the refunds shall be made in roads or in cash, while under the last section there is no option and funds expended under Section 8128 must be repaid in cash. It is therefore the opinion of this department that if roads had been constructed prior to the passage of the Centennial Road Law, which is the name of the Act under which the highway department now functions, and such roads were taken into the highway system that it is optional with the political subdivision wherein the roads lay whether they shall be reimbursed in the form of additional roads or in cash. However, if the roads were actually constructed after the passage of the Centennial Road Law, under the supervision and according to the plans of the highway department, then the refund will be made in cash.

You do not state in your letter how the money of this District was raised, whether by a bond issue or whether as a result of taxes in the Road District. If the money which was expended on the roads which afterwards entered into the highway system, was raised by taxation, then we believe that the money refunded under either Section should go into the treasury of the district and could be used for the purpose of building additional roads, or it may be used under Section 8127 for the purchase of rights-of-way for state highways within such district. If the refund is being made under Section 8128 and the money arose from taxation, we believe that such funds should go into the treasury of the district and may be used for the purpose of building roads in the district.

We find no authority in the law which would permit the returning of this refunded money to the taxpayers, whether the money was originally raised by general taxation for road purposes in the district or whether it was the proceeds of a bond issue floated by the district. However, if the money expended

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on the roads which went into the highway system was the proceeds of a bond issue for that purpose, we think a difficult situation arises. Section 20 of Article X of the Constitution of Missouri provides as follows:

"The moneys arising from any loan, debt or liability, contracted by the State, or any county, city, town or other municipal corporation, shall be applied to the purposes for which they were obtained, or to the repayment of such debt or liability, and not otherwise."

Under the foregoing constitutional provision money raised by a bond issue shall be expended for the purposes for which the bonds were voted and for the repayment of the bonds and not otherwise. If the money which went into the roads which became a part of the highway system was raised by a bond issue and such bond issue covering these roads has not been paid off, then we believe that the \$30,000.00 which is to be refunded, if in cash, should go first, to discharge the bonds voted for by the District which built the roads. If the bond issue which built the roads that went into the system has been paid off, or if there is an excess after the retirement of the unpaid bonds, then we believe that the balance remaining becomes the property of the road district and may be used for the purpose of building additional roads therein.

It is therefore our opinion that the law provides no method by which the money refunded by the highway department can be directly returned to the taxpayers. If the refund is made under Section 8127, the reimbursement may take the form of additional roads or cash, according to the election of the authorities of the district. If made under Section 8128, the refund shall be in the form of cash, as there is no option under that Section to refund in additional roads. Where cash is refunded under Section 8127, it may be used for the purpose of purchasing rights-of-way for state highways within the district, or it may be returned to the treasury of the district to be used for the purpose of improving or constructing roads in the district. If the refund is made under Section 8128, the cash should go into the treasury of the district and may be used for the purpose of building roads therein. In the event, however, that the money which built the original roads which went into the highway system came not from taxes but from a bond issue for that purpose, then the refund, under Section 20 of Article X of the Constitution, must first be applied to retire the bonds outstanding which paid for the roads that went into the highway system. If there are no such outstanding bonds, then even though the money came from a bond issue, we believe it should be returned to the treasury of the district and used for the purpose of improving, repairing and building other roads.

Very truly yours,

*Frank W. Sawyer*  
Assistant Attorney General.

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APPROVED: