

IN RE: Refund money for roads taken over by State, may be used to purchase farm to market right-of-ways; special road district has no authority to borrow money from county. ✓✓

5127 - 8047 RS Mo 1929

April 5th, 1933



Hon. E. A. Farris,
Prosecuting Attorney,
Way County,
Richmond, Missouri.

Dear Sir:-

Your request for an opinion has been received pertaining to the following questions:-

- " 1. Has the County Court the right to use refund money obtained from the State in the purchase of right-of-way of Farm to Market Roads.
2. Can the County Court and special Road Districts make agreement by which the County Court advances money for the purchase of right-of-ways to be repaid by Special Road District.
3. Money advanced toward the purchase of right-of-way will be money in the excess of the amount necessary to pay off the bonds of the County."

Paragraphs 1 and 3 in your request are so correlated that they will be treated together.

(1) The farm to market roads were authorized by the Constitutional amendment creating the State Highway system; Section 44a Article IV of the Missouri Constitution.

Section 8127 A. S. Mo. 1929 relating to the reimbursement of counties in cash provides:

"* * *all or any portion of such reimbursement made in cash may be used for the purchase of right-of-ways for State highways within such county or civil subdivision."

A farm to market road is a State highway within the definition laid down in Section 8093 A. S. Mo. 1929.

It is the opinion of this office that the county court has the authority to use refund money obtained from the State, which is in excess of the amount necessary to pay off the bonds of the county, in the purchase of right-of-ways for farm to market roads.

(2) While your request for an opinion does not state under what

April 5th, 1933

special road district law your road districts are organized, we are assuming for the purpose of this opinion that they are organized under Article 9, Chapter 42, R. S. Mo. 1929. The powers and duties of the special road district board are set out in Section 8033, R. S. Mo. 1929;

" * * * to construct, improve and repair * * highways."

Section 8047, R. S. Mo. 1929 provides that the district road fund shall be disbursed only,

"* * * for working, repairing and improving public roads of such districts * **, and for no other purpose; and no part thereof shall be used for paying damages and costs for opening new roads."

The authority of the special road district to obtain money in advance of its revenues is limited to the methods set out in Section 8053 R. S. Mo. 1929; namely, (1) issuing anticipation warrants to the extent of one year's income, and (2) by a bond issue. A special road district may issue bonds. Harris v. Bond Co. 244 Mo. 664, l.c. 692. We are therefore of the opinion that the special road district has no authority to borrow money from the county court. There is no statute authorizing the county court to loan money to the road district.

Section 8127 R. S. Mo. 1929, provides that the reimbursement shall be made to counties or other 'civil subdivisions'. The term "civil subdivisions" includes a road district. Section 8132 R. S. Mo. 1929. It appears therefore that if any of the reimbursement funds are for roads taken over by the State that originally belonged to a special road district, that the refund covering this road in the special road district belongs to the special road district funds.

It is therefore the opinion of this department that (1) the refund money in excess of the amount necessary to pay off the bonds, may be used for the purchase of right-of-ways for farm to market roads; (2) that the county court has no authority to advance money to a special road district and the special road district has no authority to borrow money from the county, for the purchase of right-of-ways for farm to market roads.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General