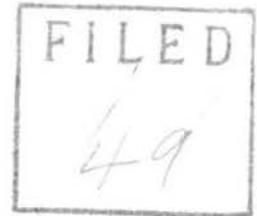


IN RE: Application of money refunded Buchanan County for improvements on roads built where same have been taken over by the state.

8127 R S Mo 1929

April 6, 1933.



Hon. Frank L. Kirtley,
Prosecuting Attorney - Buchanan County,
St. Joseph, Missouri.

Dear Sir:

Your letter states as follows:

"About June 1919 Buchanan County voted and issued \$2,000,000 road bonds by special levy and built some paved roads; these were later taken over by the State and from time to time the County has received refunds thereon.

There are about \$300,000 of this Bond Issue outstanding. \$100,000 due June 1933 will be met out of the levy, and the balance will be retired the same way in due time (about two years).

The County has just received \$100,000 additional refund from the State Highway Department and the controversy has arisen as to how it shall be applied. Former county courts used most of the funds thus received to build additional roads (\$400,000). One allotment (\$125,000) was used to take up protested warrants.

There is a large amount of unpaid warrants outstanding in the General Revenue and Special Road and Bridge Funds.

Many of the outstanding warrants were issued for road and bridge repair, maintenance and construction out of both the General Revenue and the Special Road and Bridge Funds.

Our question is: What, in your opinion, can Buchanan County legally use such State Highway refund money for or apply it to? Should the county use this money to pay outstanding warrants? If so, must it be applied to the outstanding road and bridge warrants for any specific year or years? May it be used to retire General Revenue warrants to the amount the General Revenue

Funds were used for road purposes? Can this money be used for current 1933 expenses in either the General Revenue or the Road & Bridge Account?"

The State having taken over a part of roads of Buchanan County under constitutional amendment adopted in 1928, the first question you ask is: "What in your opinion can Buchanan County legally use such State Highway refund money for or apply it to?" Section 8127, R.S. of Mo. of 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 Mississippi, Missouri 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 ***"

Your letter fails to state whether or not all the roads taken over by the state were built under the \$2,000,000 Bond Issue, or whether some were built by special road districts, or by other bond issues. I will therefore answer you (1) on supposition all roads taken over by the state were built with the \$2,000,000 Bond Issue; (2) part of said roads were built and paid for by special road districts under the Special Road District Law of the State; (3) part of said roads were built either by other county bond issues or by special road districts levying taxes therefor, or by special tax levies voted by the county.

The constitutional amendment under which the refund money is paid Buchanan County for what the county has spent on roads and bridges provides as follows:

"The proceeds of the sale of the Seventy Five Millions of Dollars (\$75,000,000) of *** bonds *** shall be expended *** to complete, widen, or otherwise improve the State system of primary and secondary highways ***; to reimburse the various counties and civil subdivisions (including road districts) of the state for money expended by them in the construction or acquisition of roads and bridges now or hereafter taken over by the state as permanent parts of the State Highway System ***"

It should be noted the constitutional amendment includes repayment not only to the county, but also to the road districts. The statutory provision for refunds to counties authorize the counties to accept part or all of refund in roads or take same all in cash.

As to the \$100,000 you have on hand, if all the roads taken over by the state were built by the proceeds of the 1919 Bond Issue of \$2,000,000, it is my opinion that the \$100,000 should be applied

to indebtedness arising from the 1919 Bond Issue as payments thereon become due. To so apply said \$100,000 and any subsequent payments would be at least meeting the spirit, and I think, the intent of Section 20, Article X of the State Constitution, which provides:

"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."

The closing language of this section, you will observe, reads: "Or to the repayment of such debt or liability, and not otherwise". The taxpayers paid for this road and now the purpose for which they paid taxes has been accomplished, but the state is legally repaying the money which the taxpayers expended for the road. The payment of the taxes was, of course, for the purpose of paying the debt created by the Bond Issue. The money received from the sale of the bonds was in reality a loan to the county by the purchasers of the bonds. The proceeds of the bonds built the road. The taxpayers for years have been paying taxes to make payments on this loan. Now the state has paid the county a certain amount of money for the improvements made by the people on this road. In other words, the state hands back to the people of Buchanan County a part, at least, of the proceeds arising from the sale of the bonds.

Suppose after the sale of the bonds and receipt of the money therefor, Buchanan County had decided it did not want to improve this road. Under the provisions of Section 20 of Article IV of the Missouri Constitution the money must only be used in two ways, first - to build the road; second, if road not built the money must be applied (I quote the language of the constitution) "To the repayment of such debt (in this case the bonds) or liability and not otherwise" (underscoring supplied). Suppose none of the bonds were yet due or had been paid and the whole \$2,000,000 thereof was yet outstanding and the State came and took over the road and paid the county \$2,000,000 in cash as a refund for the money the taxpayers had spent in improving the road--Under these conditions there can be no doubt the \$2,000,000 should be used in the payment of the bonds as they matured and should be held as a special fund set apart by the constitution and the statutes for a particular purpose.

Here we have the case in which a part of the money, at least, which the people spent in improving this highway is returned to the people, and it occurs to me that until these bonds are all paid, the money received from the State as a refund for improvements on this road should be applied on the payment of the bonds remaining unpaid as same mature.

It is a sound principle of taxation which prescribes that the benefits of taxation should be directly received by those directly concerned in bearing the burdens of taxation. Those who should receive

the benefit from this refund by the State are the taxpayers who have been and will be concerned in directly bearing the burden of taxation; they should receive the benefit, in my judgment, of the application of this refund from the State to the payment of the bonds remaining unpaid, thus relieving the taxpayers of \$300,000 of taxes.

Of course, I have not before me a copy of the proposition submitted in 1919 and voted by the people of Buchanan County upon which vote these bonds are based, and I am assuming that the building of this specific road, and this one road only, was the subject of the bond issue.

I will now take up the second assumption of facts, to-wit: that part of these roads taken over by the State and refund made therefor had been built and paid for, or partially paid for as the case may be, by taxes upon property in a special road district. Suppose now that of the \$100,000, \$25,000 represented roads built by special road districts; in such event, I am of the opinion that under the provisions of the Constitution and of Section 8127 of the Statutes, the \$25,000 of this \$100,000 would be the property of the road district.

The constitutional amendment of 1928 expressly declares upon facts: I assume the portion of the \$100,000 representing the road or roads built by special district belongs to the district and not the county. The language of the Constitution is:

"The proceeds of the sale of Seventy Five Millions of Dollars (\$75,000,000) of bonds *** shall be expended *** to reimburse the various counties and civil subdivisions (including road districts) of the state for money expended by them in the construction or acquisition of roads and bridges."

In my opinion any road built by taxpayers of a special road district and taken over by the state, the money refunded by the state for said road is the property, not of the county, but of the special road district, and if county collects and fails to pay over the money to the road district or diverts the money to other purposes, the district can through the courts force the county to pay the district what is due it; and the fact, if it be a fact, that when the roads were taken over by the State no separate value was fixed on each road for purpose of the refund by the state would not in the least affect either the right or the legal remedy of the road district. In the case of

Carthage Special Road District v. Ross et al, County Court Judges, 270 Mo. p. 76

the court held:

"Section 3786, Revised Statutes, 1909, declaring that 'whenever there is a balance in the County treasury to the credit of any special fund, which is no longer needed for the purposes for which it was raised, the County Court may, by order of record, direct that

said balance be transferred to the credit of the General Revenue Fund of the county, or to such other fund as may, in their judgment, be in need of such balance' is still live law as to all the revenue of the county remaining within the control of the County Court; but the road fund has by later enactments been removed from the court's control and entrusted to other agents, to be expended by them for a definite purpose."

We see, therefore, that the road funds once dedicated to a certain purpose under the laws of this state are no longer under the control of the county court as part of the General Revenue Fund of the county.

I will now deal with the third supposition of facts, that is, assuming that under another bond issue prior or subsequent to the Bond Issue of 1919 bonds had been issued and roads improved and one or more such roads were included in the roads taken over by the State Highway and for which refund is being made and of which refund the \$100,000 you now have on hand is a part.

It is my opinion that if there was not made an estimate for the value of different roads individually and refund made or agreed to be made by the State as so much refund for each road, then if that condition exists and there are two or more road bond issues, portions of which issues of county bonds yet remain outstanding and unpaid, or if one or more of roads taken over have been built by special road districts, in such event the \$100,000 and subsequent refunds should be prorated and paid on some fair basis of valuation of the respective roads to the respective holders of the several county bond issues and to the road district, and an action at law in nature of a suit for an accounting by any bond-holder of either of unpaid issues of bonds or by a road district would lie against the county to force a proration of the refund money paid by the state for the roads taken over.

Logan County v. Lincoln, 81 Ill., 156

and to such a suit the Statute of Limitations does not apply.

Spaulding v. Arnold, 125 N.Y., 194, 26 N.E. 295

You ask the following questions: "What, in your opinion, can Buchanan County legally use such State Highway refund money for, or apply it to? Should the county use this money to pay outstanding warrants? If so, must it be applied to the outstanding road and bridge warrants for any specific year or years? May it be used to retire General Revenue warrants to the amount the General Revenue funds were used for road purposes? Can this money be used for current 1933 expenses in either the General Revenue or the Road and Bridge Account?"

In reply to these questions I beg to say that until all payments have been made upon all outstanding bond issues for roads taken over by the state and until any special road district or districts have been

repaid for money spent in building any road or roads taken over by the state, all of the \$100,000 you have on hand as a refund by the state for roads taken over by the State Highway Department should be used to retire any of such outstanding obligations to bond holders or road districts.

As to whether or not if a surplus should exist in the shape of money refunded by the state for roads taken over after all of the hereinabove obligations for which I consider the refund money bound have been satisfied, any of it could be applied to payment of outstanding road and bridge warrants issued by the county or to retire General Revenue warrants to the amount General Revenue funds were used for road purposes or be used for current 1933 expenses in either the General Revenue or the Road & Bridge Account, would depend on whether or not the courts will hold that where money has been set apart by the Constitution for a given purpose and that purpose has been accomplished, and the object of the creation of the fund has been realized, that a transfer of any balance remaining might under Section 12167 Revised Statutes of Missouri, 1929, be made by the County Court to the credit of the General Revenue Fund of the county, or such other fund as may, in their judgment be in need of such balance.

In the Ross case above cited, 270 Mo., p. 76, the Supreme Court seemed to express the view that the Constitution removed these funds raised under provisions of the Constitution and set apart for a particular purpose from the jurisdiction of the County Court in so far as its general authority over the funds of the county are concerned. However, no case is authority for anything beyond the actual issue decided therein, and the only questions decided in the Ross case were (1) that the special road district was the owner of the fund in controversy and (2) that the County Court could not divert the special road district fund by a transfer thereof to any other fund or use it for any county purpose.

I have answered your questions in so far as I could upon the facts within my knowledge and upon the assumption of facts which may or may not exist. If there are any other questions you desire to submit to me in this matter, I will, of course, be glad to answer same for you if I can do so.

Yours very respectfully,

WILLIAM ORR SAWYERS,
Assistant Attorney General.

APPROVED:

Attorney General