

ROADS AND BRIDGES:-Refund for bridges of Missouri River to be made under Section 8129, R. S. Mo. 1929. Refund received, if in cash, should be paid to county, city or road district which advanced funds in the first instance.

12-27
November 28, 1933.



Mayor R. L. Willeford,
Hardin, Missouri.

Dear Sir:

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

"May I ask of you in behalf and for the Hardin Special Road District, and the City of Hardin, of Ray County, to or for what purpose, the refund on the Lafayette-Ray County bridge to be used. And the necessary procedure for our district to get their proportionate part of this fund. Our road district and city are in need of any fund that may belong to them, as I suppose are most municipalities.

To date we have been unable to get a distribution from our County Court in our community, although some districts in our County have received their apportionment. Any information your office may give us will be gratefully received by our community."

Section 8129, R. S. Mo. 1929, which provides for refunds where any bridge has been constructed or purchased, is as follows:

"Whenever a county, city or other civil subdivision shall have constructed or purchased out of public funds any bridge across any navigable stream entirely within the state of Missouri, that forms a segment or part of the state road system or any easement thereon, then the state highway commission may, at such time or times as the road funds will justify without interfering with other state road construction or maintenance, construct and build such roads in such county, city or other civil subdivision as the county court of such county or in which such city or other civil subdivision is situate may direct; the cost of which roads shall be equal to the value to the state of such bridge at the time taken over, not exceeding in any case the amount expended by such county, city

or other civil subdivision in the acquisition of such bridge; provided, however, that any county, city or other civil subdivision may elect to receive such reimbursement from the state highway commission in cash."

The above section provides for a refund to the county, city or other civil subdivision having constructed or purchased out of public funds any bridge across any navigable stream entirely within the state whenever the highway commission believes that such refund may be made without interfering with any road contract or maintenance. The section provides that the highway commission may construct and build roads in such county, city or other civil subdivision as the county court of the county in which the city or other subdivision is situated may direct. The proviso provides that any county, city or other civil subdivision may elect to receive such reimbursement from the highway commission in cash.

It is apparent from your letter that the county has elected to receive this refund in cash and that portions of the fund due to other districts and cities have been paid to them by the county. This money does not belong to the county, but belongs to the city or road district which contributed the funds in the first instance. The county has recognized this by making refunds to some districts in your county, but for some reason has failed to pay to the city of Hardin that portion due it. If the county refuses to make this distribution, then it will be necessary for the city and the district to bring suit against the county to recover the portion due them.

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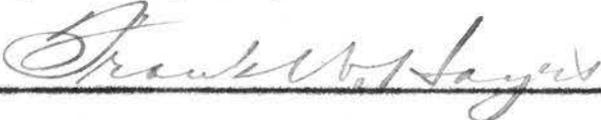
You next inquire what/funds arising from this refund may be used for. Section 20 of Article X of the Constitution of Missouri provides as follows:

"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 the repayment of such debt or liability, and not otherwise."

If the money which was used in the construction of the Lafayette-Ray County bridge arose from a bond issue, then under the foregoing constitutional provision, such money shall first be applied to the retirement of the bonds and not otherwise. If there is a surplus of funds remaining after the retirement of the bonds, or if the money did not arise in the first instance from the sale of bonds, then we believe that the funds should be returned to the treasury of the city or district and allotted to the funds from which they were originally withdrawn. Section 8127, dealing with refunds for roads, expressly exempts "bridges over the Mississippi, Missouri and the navigable portions of the Osage and Gasconade rivers." That Section, therefore, does not apply to the refund arising from the Lafayette-Ray

County bridge and the refund for this bridge is made under Section 8129 which does not provide how such funds shall be used after they have been paid back to the county, city or other civil subdivision. There being no restriction in said section as to how refunds shall be used, we are of the opinion that the money should be returned to the treasury of the city or district and should be credited to the fund from which it was drawn and may be used for the same purposes which the funds in the first instance might have been used for.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

FWR:S