

COUNTY BUDGET LAW: County Court cannot pay cost of rights-of-way in Special Road Districts out of expenditures in Class 3, but must pay same out of expenditures in Class 5.

June 21, 1934.

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Hon. C. Roy Marsden,
Clerk of County Court,
Jefferson County,
Hillsboro, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of May 10 - also the supplemental letter of Honorable Sam M. McKay, Prosecuting Attorney - relating to the following question:

"Last week I requested the Prosecuting Attorney, Mr. McKay to ask you for an opinion in regard to expenditures under Classification No. 3 of the County Budget Law. I am enclosing a copy of Classification No. 3 as sent out by the State Auditor. Can the County Clerk issue warrants for any work performed or pay for any right-of-way in the Special Road Districts?

Classification No. 3, page 341 or Classification No. 2, page 344 does not include the word 'roads', but says 'amount required, if any, for the up-keep, repair or replacement of bridges on other than State Highways (and not in any Special Road District). Section 8131, R.S. Mo. 1929 provides that any civil or sub-division shall have power and authority to purchase right-of-way out of funds available and for road purposes. Section 8132 defines the term 'civil subdivision', 'wherever the word civil subdivision is used shall be deemed and taken to mean a county, township, road district, or other political subdivision of the state, etc.'

The State Auditor's interpretation (or night mare) of classification No. 3, if he is correct, would not permit the county clerk to issue a warrant out of county funds for any work or construction on roads or bridges, purchase of right-of-way, or any

expenditures incurred in the limits of a special road. Section 8 of the Budget Law holds the county clerk, treasurer or other officer participating in the issuance or payment of any warrant contrary to the provision of the act shall be liable therefor on his official bond. We have considerable amount of right-of-way to purchase in special road districts on Route #21 supplemental system S.V. and I am refusing to issue warrants for same until your office gives me a favorable opinion."

The classification of expenditures under the new Budget Law as set forth in Section 2, page 341, Laws of Mo. 1933 contains in Class 3 the matter to which you refer, and is as follows:

"The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or replacement of bridges on other than state highways (and not in any special road district) which shall constitute the third obligation of the county."

Under the caption "Classes of expenditures" on page 344, Laws of Mo. 1933, it is provided that "repair and upkeep or replacement of bridges on other than state highways and not in any special road district" shall be shown by the county court for the year in Class 2.

We construe Class 3 to exclude completely from consideration by the county court in the classification of expenditures, any upkeep, repair or replacement of bridges and also, the cost of obtaining rights-of-ways in special road districts. It was evidently the manifest intention of the Legislature to exclude special road districts.

Under Section 8024, R.S. Mo. 1929, dealing with the organization of special road districts, the Commissioners, as defined in Section 8026, R.S. Mo. 1929, have exclusive control over the funds and the roads within the district. This was the gist of the opinion in the case of Harris v. Bond Co., 244 Mo. 644; hence, the Legislature treated special road districts as separate and distinct political sub-divisions, excluding them when classifying the expenditures.

We shall next consider the right of the county court to pay for the rights-of-way mentioned in your letter in the special road districts out of any other class. Section 8039, R.S. Mo. 1929 is as follows:

"Said board may, by contract or otherwise, under such regulations as the board shall prescribe, build, repair and maintain, or cause to be built, repaired or maintained, all bridges and culverts needed within said district: Provided, however, that the county court of the county in which said special road district is located may, in its discretion, out of the funds available to it for that purpose, construct, maintain, or repair, any bridge, or bridges, or culvert or culverts in such road district, or districts, or it may, in its discretion, appropriate out of the funds available for that purpose money to aid and assist the commissioners of said special road district, or districts, which shall be expended by the commissioners of said special road district, or districts, as above provided."

This section is broad enough in its scope to give the county court power to pay for rights-of-way in special road districts, but having held above that such expenditures could not come within Class 3, we must next consider other classes out of which such funds might be paid. Class 5 deals with the contingent emergency expense of the county, and it is the opinion of this department that the expenses of obtaining rights-of-way in special road districts could be classified as incidental expenses.

CONCLUSION

In view of the foregoing, it is the opinion of this department that the county court cannot pay the cost of rights-of-way in special road districts out of expenditures in Class 3, but it may pay same out of the expenditures in Class 5.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General