

ROADS AND BRIDGES: Construction of Section 44a, Missouri Constitution as it relates to traffic relief roads chargeable against State Road Fund.

June 26, 1935.

Honorable Maurice Hoffman
Prosecuting Attorney
Buchanan County
St. Joseph, Missouri



Dear Sir:

We acknowledge your request for an opinion dated May 29, 1935, which is as follows:

"As advisor to the County Court of Buchanan County I want to get your opinion as to the construction to be placed on section 44-A of article 4 of the State Constitution, particularly the construction to be placed upon the clause near the end of paragraph 4 of said section 44-A, which is in these words, 'to construct and maintain other state highways and bridges and to widen or otherwise improve existing state highways and bridges in the congested areas adjacent to the cities of St. Louis and Kansas City'.

"The people of this city, and the County Court as their representatives, are interested in establishing a traffic relief road between Savannah and St. Joseph. The contention of the Court is that the words of this clause 'to construct and maintain other State Highways and bridges' authorize the building of such a road out of this city as a traffic relief road and it is their contention that the words in that clause following the language just quoted does not limit the authority to construct such roads to areas adjacent to the cities mentioned, St. Louis and Kansas City.

"I would appreciate very much an opinion on the construction to be placed on this clause at your earliest convenience."

Article IV, Section 44a, paragraph 4 of the Missouri Constitution provides more fully than that portion quoted in your request, and your problem should be determined with an understanding of the whole amendment, particularly the 4th and 9th paragraphs of said amendment. The 4th paragraph of the amendment reads as follows:

"The said bonds and the interest that will accrue thereon shall be paid out of a fund to be provided by the levy and collection of a direct annual tax upon all taxable property in the State. All state motor vehicle registration fees, license taxes or taxes authorized by law on motor vehicles (except the property tax on motor vehicles and state license fees or taxes on motor vehicle common carriers) and also all state taxes on the sale or use of motor vehicle fuels authorized by law, less the expense of the collection of such registration fees and license taxes on motor vehicle and taxes on the sale or use of motor vehicle fuels and less also the cost of maintaining the State Highway Department and the State Highway Commission and the cost of administering and enforcing any state motor vehicle law or traffic regulation shall, after the issuance of any of said bonds and so long as any of said bonds herein authorized remain unpaid, be and stand appropriated without legislative action, to the payment of the principal and interest of the said bonds and for that purpose shall be credited to the State Road Bond Interest and Sinking Fund provided by law. If in any year there should be any balance in the State Road Bond Interest and Sinking Fund beyond the requirements of the next

succeeding calendar year for interest and sinking fund of the said bonds, such balance shall be transferred and credited to the State Road Fund to be administered and expended under the direction and supervision of the State Highway Commission for the following purposes: to complete and widen or otherwise improve, and maintain the state system of primary and secondary highways as designated and laid out under existing law; to reimburse the various counties and political or 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 to the extent of the value to the State of such roads and bridges at the time taken over, not exceeding in any case the amount expended by such counties or subdivisions in the construction or acquisition of such roads and bridges; to construct and maintain other state highways and bridges, and to widen or otherwise improve existing state highways and bridges in the congested traffic areas adjacent to the cities of St. Louis and Kansas City; to locate, establish, acquire, construct, and maintain, as hereinafter provided, supplementary state highways and bridges in each county of the State, in addition to those state highways and bridges designated and laid out under existing law, and to acquire materials therefor, and for such other purposes and contingencies relating and appertaining to the construction and maintenance of such highways and bridges as the State Highway Commission may deem proper."

The 9th paragraph of the amendment reads as follows:

"In order to connect state highways as designated and laid out under existing law with other such highways or with highways in adjoining states, and also in order to facilitate and expedite the movement of through traffic, the State Highway Commission is hereby authorized and empowered to locate, construct, and maintain from the funds herein provided for construction of primary and secondary highways and from the State Road Fund, highways and bridges not exceeding in the aggregate three hundred (300) miles as a part of and to be added to the said state highway system, and from such funds the State Highway Commission is hereby also authorized and empowered to locate, construct, and maintain highways and bridges in state parks, now or hereafter established, and connect the same with the primary or secondary highways of the State."

Article IV, Section 44a of the Missouri Constitution, which we refer to as "the Amendment," was submitted to the people by initiative petition and adopted at the General Election held November 6, 1928. Said Amendment repeals the preexisting Section 44a. It enacts in lieu thereof a new section which authorizes the General Assembly to issue \$135,000,000.00 worth of State Bonds, which is \$75,000,000.00 in addition to the \$60,000,000.00 authorized to be issued under the repealed preexisting Constitutional Amendment.

We have not quoted the whole Amendment, as it exists today, but we do state that after the people, by their vote authorized the issuance of said bonds, for the purpose of "locating, establishing, acquiring, constructing, widening and improving hard surfaced public highways in the State" for the purpose of "locating and constructing bridges across the rivers and waters of the State, and of the participation in the constructing of toll free interstate bridges" the people then proceeded to authorize the sale of the said \$75,000,000.00 additional bonds, the proceeds to be expended under the direction and supervision of the

State Highway Commission for the purposes underscored in the Constitution above appearing in paragraph 4. Lastly, the people by said paragraph proceeded to authorize the retirement of said bonds from the proceeds received from license tags, etc., to be placed in a sacred fund to be known as a State Road Bond Interest and Sinking Fund.

As we understand your request you want to know whether or not any balance in the State Road Bond Interest and Sinking Fund, beyond the requirement of the next succeeding calendar year, for interest and sinking fund of the said bonds, which has been duly transferred and credited to the State Road Fund to be expended under the direction of the State Highway Commission can legally be used in establishing a "traffic relief road between Savannah and St. Joseph" by virtue of the provisions of the 4th paragraph of Section 44a of the Constitution which authorizes the use of money in the State Road Fund "to connect and maintain other state highways and bridges, and to widen or otherwise improve existing state highways and bridges in the congested traffic areas adjacent to the cities of St. Louis and Kansas City;".

In the case of State ex rel. Russell v. State Highway Commission, 42 S. W. (2d) 196; 328 Mo. 942, the Supreme Court had under consideration an original proceeding in mandamus wherein Russell wished to compel the Highway Commission to consider a petition presented to the Commission for widening of U. S. Highway No. 40 within the corporate limits of Kansas City, at the expense of the State from State funds credited to the State Road Fund. The Court took occasion to construe all of Section 44a, Article IV of the Missouri Constitution, and to apply its construction to the problem before them. On page 952 of the Missouri Report the Court said:

"The fourth paragraph names the sources of revenue from which the principal and interest due on the bonds shall be paid, including certain fees, licenses and taxes less the expense of collection and the cost of maintaining the State Highway Department and State Highway Commission, etc. This net revenue above the annual requirements for interest and sinking fund for the bonds

is to be credited to the State Road Fund 'to be administered and expended under the direction and supervision of the State Highway Commission for the following purposes: * * * * it seems the proceeds from the bond issue are to be used only for construction and improvement work, and to reimburse counties, etc., for highways taken over, whereas moneys derived from the specified revenue sources above the requirements for paying off the bond issue may be used for those purposes and for maintenance as well. See Sections 8144-8148, Revised Statutes 1929."

On page 953 the Court said:

"The ninth paragraph figures large in this controversy. It is as follows: 'in order to connect state highways as designated and laid out under existing law with other such highways or with highways in adjoining states, and also in order to facilitate and expedite the movement of through traffic, the State Highway Commission is hereby authorized and empowered to locate, construct, and maintain from the funds herein provided for construction of primary and secondary highways and from the State Road Fund, highways and bridges not exceeding in the aggregate three hundred (300) miles as a part of and to be added to the said state highway system, and from such funds the State Highway Commission is hereby also authorized and empowered to locate, construct, and maintain highways and bridges in state parks, now or hereafter established, and connect the same with the primary or secondary highways of the State.' "

On page 954 the Court, after summarizing the words of the amendment, said:

"As the foregoing summary shows, the road construction authorized by the constitutional amendment falls into five classes:

(1) The completion and widening or other improvements of the state system of primary and secondary highways as designated and laid out under existing law.

(2) The construction of other (new) state highways and bridges and the widening or other improvements of existing state highways and bridges in the congested traffic areas adjacent to the cities of St. Louis and Kansas City.

(3) The location, establishment, acquisition and construction of 'supplementary' state highways and bridges in each county of the State, exclusive of St. Louis and Kansas City, in addition to those state highways and bridges designated and laid out under existing law, these being what are generally called 'farm-to-market' roads.

(4) The location and construction of not exceeding three hundred miles of highways and bridges to be added to the state highway system 'in order to connect state highways as designated and laid out under existing law with other such highways or with highways in adjoining states, and also in order to facilitate and expedite the movement of through traffic.'"

On page 962 the Court said:

"In providing for 'traffic relief' roads in congested areas the amendment definitely locates these areas as being 'adjacent' to St. Louis and Kansas City. In dealing with the supplementary state highways the two cities are expressly excluded. Indeed,

in referring to the state highway system it is carefully described as the system 'designated and laid out under existing law.'

"On the other hand, when it comes to the 300-mile addition to the system there is no such limitation. The sole condition imposed is that these roads shall be built in order to connect highways in the state system with other such highways or with highways in adjoining states, and also in order to facilitate and expedite the movement of through traffic. As to the latter objective it must have been in contemplation that one of the greatest obstructions to the movement of through traffic is congestion; and that this condition would be encountered in and entering these two cities. Indeed, the amendment takes notice of it by providing for traffic relief roads in the 'congested' areas adjacent thereto. And yet, as we say, there is no word of restriction in this paragraph against building such roads inside the corporate limits of Kansas City and St. Louis, notwithstanding the framers of the section were meticulous in that regard in the other clauses. The language of the '300-mile' paragraph being without exception and for a paramount and definitely stated purpose which we know may be served by road construction within these municipal areas, it would do violence to the amendment to read into it a proviso excluding them, or to say the omission of such limitation was through oversight.

"Respondent insists that if it had been the intention to facilitate the movement of through traffic inside the two cities by relieving against congestion, that concept would have been covered in the 'traffic relief'

clauses instead of limiting the latter to areas 'adjacent' to the cities. That might have been done, but the traffic relief provisions allow both new construction and the improvement of existing roads, and they contain no express limitation as to mileage, whereas the paragraph under consideration authorizes only new construction and holds it to a maximum of 300 miles for the whole State. These limitations may have been in mind. It may be suggested further that if it was the intention to speed up through traffic by relieving congestion, why did the 300-mile clause provide only for building new roads instead of allowing also the widening and improving of existing roads, as was done in the 'traffic relief clause? ' We do not know; it may have been intended to construct a few separate roads for through traffic."

On page 963 the Court said of the 9th paragraph of the Amendment:

"We find it unnecessary to decide the question further than to say we think the paragraph states two separate purposes, (1) to connect highways and (2) to facilitate the movement of through traffic."

On page 965 the Court said:

"But while, as is held in the foregoing part of this opinion, there is nothing in the '300 mile' provision of the constitutional amendment forbidding the building of highways into the corporate limits of St. Louis and Kansas City for the special purposes mentioned in that clause, * * * *. So, also, with the 300 miles of roads, the Commission may 'locate (and) construct' them as an addition to the designated system. In our opinion this clearly

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contemplates only the building of new roads adding mileage to the state system, and not the widening of existing roads."

CONCLUSION.

We are of the opinion that a traffic relief road between Savannah and St. Joseph does not come within the provisions of the 4th paragraph of the Constitutional Amendment, supra, suggested by you, namely, "to construct and maintain other highways and bridges,". As said quotation must be construed with the whole amendment and when so construed, said quotation, as it relates to road construction, merely authorizes the construction of other (new) State highways and bridges, and the widening or otherwise improving existing State highways and bridges in the congested traffic areas adjacent to the cities of St. Louis and Kansas City. State ex rel. Russell v. State Highway Commission, supra, page 952.

Our conclusion, hereinabove set out, was predicated on the premises contained in your letter, which only concerned Paragraph 4 of the Constitutional Amendment, supra. However, we do not wish to be understood as holding that a traffic relief road may not be constructed between Savannah and St. Joseph. However, if such is done, it must be by virtue of Paragraph 9 of said Amendment, provided, of course, the three hundred miles of such additional traffic relief roads have not already been included in the State Highway system.

We suggest this to you so that inquiry may be conducted to determine if the road may be obtained by virtue of the 9th Paragraph.

Respectfully submitted

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APPROVED:

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(Acting) Attorney General.

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