

ROADS AND BRIDGES - Limitation on special road district incorporated under Article 9, Chapter 42, R. S. Missouri, 1929, in incurring indebtedness.

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February 7, 1935.

Mr. O. A. Kamp,
Prosecuting Attorney,
Montgomery County,
Montgomery City, Mo.



Dear Sir:

A request for an opinion has been received from you under date of December 28th, 1934, such request being in the following terms:

"I have a letter from the Secretary of the Jonesburg Special Road District, Board of Road Commissioners, stating that he had written your department for an opinion relative to the Commissioners of the District purchasing a tractor and obligating the district for the payment of same, and that you advised him to have me write for the opinion.

It is my understanding of the law that the only provisions for a Board of Commissioners to place an indebtedness against a district is by a bond issue, to be voted upon by the voters. However, I have advised them that it is not unusual for a Board of Commissioners to borrow money for a legitimate purpose, such as the purchasing of a tractor which is needed, but that it would not relieve them from personal liability on the note, in case serious opposition to that action was taken by the taxpayers of the district. I would like to have your opinion on that question so I can advise them of same on this question, about them obligating the district for a new tractor, when they do not have the money to pay for it."

We believe that the answer to your question is found in R. S. Missouri, 1929, Section 8053, which provides

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as follows:

"Such board may issue warrants on the treasurer of the board in payment of the expenses and obligations which the board are authorized to incur in behalf of such special road districts and such warrants may be issued in anticipation of the income and revenue provided for the year for which the debt or obligation for which the warrant is issued was incurred; but such districts or such board on behalf thereof shall not become indebted in any manner or for any purpose to an amount exceeding in any one year the income and revenue provided for such year; provided however, that this shall not prevent the incurring of indebtedness under bond issue as is or may be provided by law."

There have been no cases decided construing this section, and we believe that its language is sufficiently clear to show the statutory limits of indebtedness which can be incurred by special road districts incorporated under Article 9 of Chapter 42 of the 1929 statutes. In such article the sources of funds for such districts are set out, including proceeds from the sale of property of the district (Section 8037), proceeds of certain licenses (Section 8041), taxes for road purposes (Section 8042), poll taxes (Sections 8043 et seq.), and money refunded by the State Highway Commission (Section 8060). There can be no doubt that the Board of Commissioners would have the right to buy a tractor, if the money were available, as Section 8033 authorizes such Board to "buy * * * all kinds of motor power, and all things needful to carry on such road work", but Section 8033, above quoted, limits the indebtedness which such Board may incur in any one year to the income and revenue provided for such year, although such section does not require such money to be on hand at the time of incurring an indebtedness, if such money is provided in the income and revenue for that year.

In conclusion it is our opinion that a special road district incorporated under R. S. Missouri, 1929, Chapter 42, Article 9, has no authority, through its Board of Commissioners, to incur indebtedness in any one year, aside from bonded indebt-

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edness, exceeding the income and revenue provided for such year, and that the members of such Board would be legally responsible for violating Section 8053, which so provides.

Very truly yours,

EDWARD H. MILLER
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General