

- ROAD DISTRICTS: (1) May purchase right-of-way and deed to state.
- (2) Those organized under Article X of Chapter 42, R.S. Mo. 1929, may not borrow money for such purpose except after petition or election.

10-31
October 29, 1935.

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Attention of Mr. F.D. Wilkins

Gentlemen:

Your recent communication requesting an opinion of this office has been received. Your request is as follows:

"There is in Pike County, Missouri, what is known as the Clarksville Eight-mile Road District of Pike County, Missouri. Its officers are attempting to borrow money for the purpose of paying for the right-of-way of Highway No. 79, which goes through their district. What I want to know is, have these officers of this road district any right to buy this right-of-way and give it to the state. Secondly, have they any right to borrow money and pledge the faith and credit of the district with which to purchase this right-of-way for this road which is to be deeded to the State?"

It would appear from the name of the Road District that it is organized and existing by virtue of Article X of Chapter 42, Revised Statutes of Missouri 1929, and shall base the statements herein made upon such a premise. In considering your problems we shall not pass on the constitutionality of the statutes referred to.



I.

ROAD DISTRICT MAY BUY RIGHT-
OF-WAY AND CONVEY TO STATE FOR
CONSTRUCTION OF STATE HIGHWAYS.

Section 8131 R. S. Missouri 1929 is a part and portion of the State Highway Act and reads in part as follows:

"Any civil subdivision as defined in this article shall have the power, right and authority, through its proper officers, to contribute out of funds available for road purposes all or a part of the funds necessary for the purchase of rights-of-way for state highways, and convey such rights-of-way, or any other land, to the state of Missouri to be placed under the supervision, management and control of the state highway commission for the construction and maintenance thereupon of state highways and bridges." * * * "

The term "civil subdivision" referred to in the foregoing section is defined in the following section to mean

"a county, township, road district, or other political subdivision of the state or quasi public corporation having legal jurisdiction of the construction and maintenance of public roads."

It therefore appears that the Clarksville Eight-mile Road District of Pike County is included within these sections and is thereby authorized to purchase rights-of-way for state highways and convey the same to the state.

CONCLUSION.

It is therefore the opinion of this office that the Clarksville Eight-mile Road District of Pike County, by and through its proper officers, may purchase rights-of-way for state highways and bridges and convey the same to the State, in the same manner as they would expend other funds of the District available for road purposes.

II.

OFFICERS OF ROAD DISTRICT MAY
NOT BORROW MONEY TO PURCHASE
RIGHTS-OF-WAY.

We have heretofore referred to Section 8131 R. S. Missouri 1929, as authorizing road districts to acquire rights-of-way and deed the same to the state for use as a state highway. This Section further provides as follows:

"Funds may be raised for the purpose of this article in such manner and such amounts as may be provided by law for other road purposes in such civil subdivision; * * * "

The use of the word "article" is confusing as to a proper interpretation of this clause, as the entire article applies to the State Highway System rather than to the purchase of rights-of-way by civil subdivisions. This Section was passed by the 56th General Assembly as House Bill 610 and is found at page 226 Laws of Missouri 1929. By referring to the original enactment we find that the word "article" does not appear in the original enactment, but it reads

"funds may be raised for the purpose of this act in such manner and such amounts as may be provided by law for other road purposes in such civil subdivision; * * * "

It therefore appears that it was the intent to authorize the civil subdivisions to raise funds for the purpose of acquiring rights-of-way for state highways to be deeded to the State in the same manner that the civil subdivisions raise other funds for road purposes.

By referring to Article X of Chapter 42 Revised Statutes of Missouri 1929, it will be found that the commissioners of the road district are authorized to issue road and bridge bonds after an election is held at which two-thirds of the voters voting at the election favor the issuance of the bonds. Section 8068 R. S. Missouri 1929. It will also be found that upon petition of certain owners a public road or part of a public road within the district may be permanently improved and the cost of the improvement assessed against the lands in the district. Section 8069. In the event that the special tax bills issued under this plan are unpaid at the expiration of thirty days

"the commissioners may borrow money not exceeding the aggregate amount of such special tax bills as are then unpaid, and at a rate of interest not exceeding eight per cent per annum and as such unpaid special tax bills are paid shall draw warrants on the county treasurer for the amount of such payment and pay whatever may be so borrowed with interest thereon."

Section 8072. It is provided by Section 8073 that special assessment bonds may be issued covering the cost of making the improvement on the road or part of the road in the district under certain circumstances.

The foregoing provisions are the only ones authorizing the borrowing of money and the pledging of the credit of the district to secure the payment of the same. No authority appears to have been granted to the commissioners of the road district to borrow money for any purpose. At least there is no specific grant of such authority.

We are cognizant of the general rule that an officer has by implication such powers as are necessary for the due and efficient exercise of those powers expressly granted or such powers as may be fairly implied therefrom. 46 Corpus Juris 1032, Section 287. Without going into the question and without determining whether or not an officer has implied authority to borrow money on the credit of the corporation he serves, so as to enable him to fulfill the duties imposed upon him by law, we believe it certain that no such implied power resides in the commissioners of road districts established under the provisions of Article II of Chapter 42. Section 8065 sets forth the general powers and duties of such commissioner and provides in part as follows:

"Said commissioner shall have sole, exclusive and entire control and jurisdiction over all public highways, bridges and culverts within the district, to construct, improve and repair such highways, bridges and culverts, and shall have all power, right and authority conferred by law upon road overseers, and shall at all times keep such roads, bridges and culverts in as good condition as the means at their command will permit" * * *

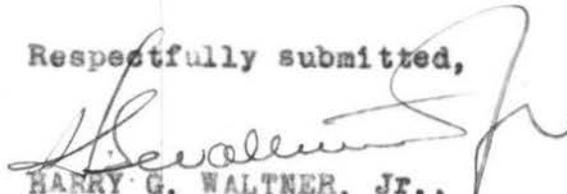
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By the inclusion of the underlined phrase it is certain that the legislature contemplated that the commissioners should only expend such funds as were subject to disbursement. The commissioners are not to extend their activity so as to incur debts which can not be paid but are to keep the road system of the county in the best condition possible with the funds which are available for that purpose. So in the instant case, by reading Section 8131 into Section 8067, the Board of Commissioners may levy a direct property tax for the purpose of acquiring rights-of-way to be conveyed to the State for state highway purposes, yet there is no authority, expressed or implied, for the commissioners to pledge the credit of the district to secure funds borrowed for such a purpose.

CONCLUSION.

It is therefore the opinion of this office that the officers of the Clarksville Eight-Mile Road District of Pike County, have no authority to borrow money and pledge the faith and credit of the district for the purchase of rights of way to be conveyed to the State for use of the state highway without complying with the provisions of Sections 8068, 8072 or 8073 R. S. Missouri 1929.

Respectfully submitted,



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APPROVED:

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