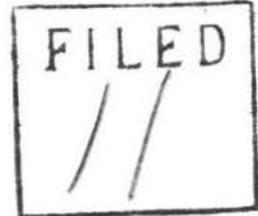


COUNTY BUDGET ACT:
ROADS AND BRIDGES:

1. County Court cannot use funds of the county to build bridges in special road districts.
 2. No funds budgeted under class 3 can be used for the repair, upkeep or building of bridges in special road districts.
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June 28, 1937

Honorable Chas. D. Brandom
Prosecuting Attorney
Daviness County
Gallatin, Missouri



Dear Sir:

This Department is in receipt of your letter of some time ago relative to the repair and upkeep of bridges. Your letter is as follows:

"The County Court of this County has directed me to write you for an opinion on the following questions:

"1. What, if any, bridges within a special road district are supposed to be constructed or maintained by the County Court?

"2. Under the Budget Law (see Section 2, Class 3, laws 1933 page 341) can the County Court include in its budget funds for the upkeep, repairs or replacements of bridges of any kind, character or value within a special road district?

"In this connection I call your attention to the fact that this County is a county under Township organization and has several special road districts within the County. It has been generally understood that the special road districts are required to maintain and replace all bridges and culverts within the district except such bridges as are commonly called County Bridges, such as bridges

across a river etc. These so-called bridges have been maintained and repaired by the County Court out of the general revenue funds.

"Section 7898 R. S. 1929, provides that no -road district shall be compelled to build a bridge which costs \$50.00 or more; also providing that the County Court shall determine what bridges - shall be built and maintained by the County and what by Road districts. From this section it would appear that the county might be required to build and maintain any bridge costing \$50.00 or more (although I understand they all cost more than that), even culverts, although the special road district laws would seem to require the districts to build the bridges within its boundaries.

"The said Budget law on its face apparently prohibits the County from setting aside anything for the upkeep, repair or replacement of bridges in any special road district, regardless of the cost thereof. It would seem to me that this clause in the Budget law would probably be construed to prohibit the County Court from setting aside money for bridges which it is the duty of the special road district to repair or replace and not intended to prohibit the County from setting aside funds to repair or build so-called County bridges. But again arises the question as to just what bridges the special road district is required to maintain or replace and what bridges come under the County Court's jurisdiction.

"With the County bridges being paid out of the general County revenue

the special road districts (residents thereof) pay their proportionate part of the general fund and it would seem that the district is entitled to have County money expended on bridges within their district the same as any other portion of the County.

"Your usual prompt opinion in this matter will be greatly appreciated."

I

"What, if any, bridges within a special road district are supposed to be constructed or maintained by the County Court?"

You stated in your letter that Daviess County is organized under township organization, hence it will be necessary to treat your question purely from that standpoint. The sections relating to road districts in township organizations are 8176 to 8199, inclusive. The confusing section relating to your section is, as mentioned in your letter, 7898, and we might add the additional section of 7900, said sections being, respectively, as follows:

"Each county court shall determine what bridges shall be built and maintained at the expense of the county and what by the road districts: Provided, that no road district shall be compelled to build a bridge which costs fifty dollars or more."

"The county court may order any bridge built by the county to be

attached to a road district, for the purpose of being kept in repair by such road district; but when the repairs necessary at one time shall exceed in value fifty dollars, the same shall not be required to be done by such road district."

In your letter you refer to Section 7898, the section referring to bridges which shall be built and maintained at the expense of the county; closely related to the same subject matter is Section 7900, relating to attaching bridges to districts. The sections are under Article IV, Chapter 42, relating to Bridges. From a complete consideration of the statutes, beginning with 7898 to 7914, inclusive, it would appear that the bridges mentioned in Article IV refer only to common road districts. There is apparently no provision which in anywise would be referable to bridges in special road districts. Therefore, in considering your question, we are of the opinion that these sections have no bearing on the question. The statutes deal with special road districts in counties of less than 50,000 inhabitants under Article IX, and special road district-benefit assessment in counties under township organization in Article X, of Chapter 42. Article XVI of Chapter 42 refers to special road district-benefit assessment in counties under township organization, which applies to your county. In an effort to arrive at an ultimate conclusion to your specific question, we shall review, briefly, the sections in the three articles herein mentioned, dealing with bridges. Articles IX and X being reviewed merely for the purpose of differentiating and fortifying the conclusion,

Under Section 8039, Revised Statutes Missouri 1929, relating to special road districts in certain counties not under township organization, the county court is given the right to build bridges and assist in building bridges in its discretion.

Under Section 8066 the building of bridges is done by authority of the commissioners. This section

is under Article X, relating to special road districts and benefit assessments in townships not under township organization. Also, Section 8065 contains the following sentence:

"Said commissioners 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 * * * * *."

Referring to Article XVI, relating to special road districts under township organization, the only pertinent section we can discover relating to bridges is Section 8180. The pertinent part being as follows:

"Said commissioners 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 the power, rights 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, and for such purposes may employ hands and teams at such compensation as they shall agree upon; rent, lease or buy teams, implements, tools and machinery; all kinds of motor power, and all things needed to carry on such work; Provided, that said commissioners may have such road work, or bridge or culvert work, or any part thereof, done by contract,

under such regulations as said commissioners may prescribe."

CONCLUSION

In view of the fact that the statutes contemplate repairing and constructing bridges shall be done by the special road district and that by the terms of Section 8182 the Board of Commissioners is empowered to levy taxes on property in the district for maintenance of bridges and culverts, and the said Board is further empowered under Section 8183 to issue bonds under certain circumstances for the purpose of constructing, repairing, and maintaining bridges and culverts within the district, we are of the opinion that the County Court is not empowered to construct or maintain any bridges in special road districts under township organization.

By the terms of the sections herein mentioned, and by complete consideration of all the statutes governing special road districts in township organization, under Article XVI it would appear that the district itself has complete control over the repairing, contracting and maintaining of bridges within its district.

II

"Under the Budget Law (see Section 2, Class 3, Laws 1933 page 341) can the County Court include in its budget funds for the upkeep, repairs or replacement of bridges of any kind, character or value within a special road district?"

Honorable Chas. D. Brandom

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June 28, 1937

Due to the conclusion reached under your first question, it would naturally follow that the County Court could not include in its budget any funds for the repair, upkeep, maintenance or replacement of bridges in a special road district. In fact, irrespective of our holding on your first question, the budget act contains a positive prohibition, same being under Section 2, Class 3, page 341, Laws of 1933.

"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."

We interpret the portion quoted above in parenthesis, "and not in any special road district" to refer to any or all bridges in a special road district,

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

OWN/LC