

COUNTY COURTS:  
COUNTY WARRANTS:  
ROAD DISTRICTS:

Warrants issued by the county court for general road districts which are in excess of anticipated revenue are void and the road district is not liable. Treasurer is liable for paying warrants out of revenue for years other than for which it was issued unless there a surplus.

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February 14, 1939



Mr. W. W. Sunderwirth  
Prosecuting Attorney  
Cedar County  
Stockton, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion from this department which is as follows:

"The County Court of Cedar County issued warrants in 1935-36-37-38 in excess of the annual anticipated revenue for those years for the purpose of sponsoring road projects in some of the general (not special) road districts within the county. The indebtedness is so great in some of the districts that the revenue for the next ten years, at 25% as provided under Section 22, Article 10 of the Constitution of Missouri, will not pay the debt. For example, District No. 1 is indebted in the sum of \$903.00, while their annual anticipated revenue is approximately \$135.00. The form of the warrants is the same as the one I have attached to this letter.

"I would like to have your answer to the following questions, as litigation on the outstanding warrants here is probable.

"1. Who should be named parties de-

fendant?

"2. What court has jurisdiction?  
(The warrants being less than \$250.00.)

"3. Are these warrants a legal obligation of the district?

"4. If the 1936 warrants are paid out of the 1938 revenue, what is the treasurer's liability, if any? (The 1936 warrants being contracted in excess of the 1936 revenue.)

"5. Does the writing of these warrants constitute the appropriating of money not authorized by law?

"6. If a judgment was obtained, how could it be paid if the revenue of the year the warrant was issued was issued

"7. Have you any suggestions as to how the situation should be handled?"

From your letter it appears that the county court of your county has issued warrants for obligations of various general road districts in the county in excess of the amount of revenue available for such district for the year in which the obligation is incurred for which the warrant was issued.

It also appears from your letter that you are taking the position that the amount of revenue raised in each general road district is all that can be spent by the county court for that district.

Road moneys for general and special road districts are raised by virtue of Sections 7890 and 7891, R. S. Missouri, 1929, which are as follows:

"The county courts in the several counties of this state, having a

population of less than two hundred and fifty thousand inhabitants, at the May term thereof in each year, shall levy upon all real and personal property made taxable by law a tax of not more than twenty cents on the one hundred dollars valuation as a road tax, which levy shall be collected and paid into the county treasury as other revenue, and shall be placed to the credit of the 'county road and bridge fund.'"

Section 7891:

"In addition to the levy authorized by the preceding section, the county courts of the counties of this state, other than those under township organization, in their discretion may levy and collect a special tax not exceeding twenty-five cents on each one hundred dollars valuation, to be used for road and bridge purposes, but for no other purposes whatever, and the same shall be known and designated as 'the special road and bridge fund,' of the county: Provided, however, that all that part or portion of said tax which shall arise from and be collected and paid upon any property lying and being within any road district shall be paid into the county treasury and placed to the credit of the special road district, or other road district, from which it arose, and shall be paid out to the respective road districts upon warrants of the county court, in favor of the commissioners, treasurer or overseer of the district, as the case may be: Provided, further, that the part of said special road and bridge tax arising from and paid upon

property not situated in any road district, special or otherwise, shall be placed to the credit of the 'county road and bridge fund' and be used in the construction and maintenance of roads, and may, in the discretion of the county court, be used in improving or repairing any street in any incorporated city or village in the county, if said street shall form a part of a continuous highway of said county leading through such city or village; but no part of said fund shall be used to pay the damages incident to, or costs of, establishing any road: Provided further, that no warrant shall be drawn in favor of any road overseer until an account for work done or materials furnished shall have been presented and audited by the county court."

It will be noted that Section 7890, supra, does not limit the county court to spend in a district only the amount of taxes collected from that district. The first proviso of Section 7891, supra, does provide that all that part or portion of the tax raised under said section which shall arise from and be collected and paid upon any property lying and being within any road district shall be paid into the county treasury and placed to the credit of the special road district, or other road district, from which it arose, and shall be paid out to the respective road districts upon warrants of the county court, in favor of the commissioners, treasurer or overseer of the district, as the case may be. The taxes raised by Section 7890, supra, may be spent by the county court in any road district in the county except those taxes which are raised from lands in special road districts. However, such taxes, if they are not demanded of the county court by the special road district, may be spent by the county court in any district in the county.

Section 8042, R. S. Missouri, 1929, provides as follows:

"In all counties in this state where a special road district, or districts, has or have been organized, or where a special road district, or districts, may be organized under this article, and where money shall be collected as county taxes for road purposes, or for road and bridge purposes, by virtue of any existing law or laws, or subsequent law or laws that may be enacted, upon property within such special district, or districts, or where money shall be collected for pool or billiard table licenses, upon business within such special road district, or districts, the county court shall, as such taxes or licenses are paid and collected, apportion and set aside to the credit of such special road district, or districts, from which said taxes were collected, all such taxes so arising from and collected and paid upon any property lying and being within such special district, or districts, and also one-half of the amount collected for pool and billiard table licenses, so collected from such business carried on or conducted within the limits of such special road district; and the county court shall, upon written application by said commissioners of such special road district, or districts, draw warrants upon the county treasurer, payable to the commissioners of such special road district, or districts, or the treasury thereof, for all that part or portion of said taxes so collected upon property lying and being within such special road district, or districts, and also for one-half the amount so collected for pool and billiard table licenses, so collected from such business carried on or conducted within the limits of such special road district, or districts."

Under this section the courts have held that special road districts are entitled, upon timely application therefor, to receive all moneys collected as taxes for road and bridge purposes upon property within their boundaries. State ex rel. v. Barry County, 302 Mo. 280, 258 S. W. 710.

These sections authorize the special districts to receive the moneys raised for taxes on lands in their districts but they do not prohibit the county court from spending more than that amount in such districts. The "county road and bridge fund" taxes raised by the provisions of Section 7890, supra, may be spent in any general road district in the county, except such of said taxes that have collected in the special road district which have been demanded by such road district as is provided by said Section 8042.

The boundary of a general road district is controlled by the county court. This is by virtue of the provisions of Section 7868, R. S. Missouri, 1929, which provides as follows:

"The county courts of all counties, other than those under township organization, shall, during the month of January, 1918, with the advice and assistance of the county highway engineer, divide their counties into road districts, all to be numbered, of suitable and convenient size, road mileage and taxable property considered. Said courts shall, during the month of January biennially thereafter, have authority to change the boundaries of any such road district as the best interest of the public may require."

By this section the county court is authorized in every biennial period to change the boundary lines of the various road district in its county. It would seem, therefore, that the lawmakers never intended that a general road

district would become obligated under the statutes as they are now written.

By a reading of Article III, chapter 42, Sections 7868 to 7897, inclusive, of the Revised Statutes of Missouri, 1929, it will be seen that the county court has general supervision over the road overseers in the county, and by said Section 7868, by changing the boundaries of the districts the court could establish new districts or abolish old districts.

As the lawmakers have failed to provide that the "county road and bridge fund" raised by said Section 7890 shall be spent in the district from which such taxes are collected, except the taxes which are raised from such road districts when timely demand has been made therefor as provided by said Section 8042, there is no doubt that the county court may spend the taxes from this fund in any general road district in the county regardless of the fact that the spending of such money in a general road district would be in excess of the amount of taxes raised in that district for that year. Section 12, Article X of the Constitution of Missouri, provides as follows:

"No county, city, town, township, school district or other political corporation or subdivision of the State shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose; \* \* \* \* \*

We do not think that the general road districts are affected by the provisions of this section, but the county court which has supervision over such districts is controlled by said section and it is not authorized to obligate the "county road and bridge fund" authorized by Section 7890, supra, or "the special road and bridge fund" author-

ized by Section 7891, supra, in an amount exceeding in any one year the income and revenue provided for such year for said funds. We think that the provisions of Section 12 of Article X of the Constitution cited above control the county court as to the spending of these funds. Therefore, the county court may issue warrants on these two funds or either of them for a general road district even though the amount is in excess of the anticipated revenue that will be derived from taxes on property in such general road district and still the court would not be violating the foregoing provisions of the constitution. However, the county court is limited by those provisions to the amount it may spend from these funds on all of the districts, both general and special in the county, and any obligation entered into and/or warrants issued in payment of such obligations in excess of that amount, is null and void.

From an examination of the statutes relating to general road districts it will be seen that the overseer is not authorized to enter into contracts for the district, or for the county court for the districts.

It is a general rule of law in this state that an official whose office is created by the statute must look to the statute for his powers and duties. Therefore, the overseer of the general road district, or the general road district which is not a body corporate, is not authorized to sue and to be sued. All contracts for the general road district must be entered into by the county court and if a suit is brought on such contract the county should be made the party defendant or plaintiff as the case may be.

On the question of the limitation of officials entering into contracts and binding the county therefor, we find that in the case of Layne-Western Co. v. Buchanan County, Mo., 85 Federal (2d) 343, l.c. 349, the court said:

"\* \* \* It is held that every person dealing with a public officer in the state is required at his peril to ascertain at the time a contract is entered into that it is within the scope of the authority which the law

conferred upon the officer. \* \* "  
Citing Missouri authorities.

Therefore, a person dealing with the county court must ascertain at the time of the contract that the court is not violating the provisions of Section 12, Article X of the Constitution of Missouri or any other statute which relates to the subject matter upon which the court is contracting and if such person fails to so ascertain the powers of the officials in connection with the contract he does so at his peril.

Again at l.c. 349, the court, in the Buchanan County case, supra, said:

"Warrants issued in payment for work done under a void contract have been declared void in a taxpayer's suit. Hawkins v. Cox, 334 Mo. 640, 66 S. W. (2d) 539; Hillside Securities Co. v. Minter, 300 Mo. 380, 254 S. W. 188, 189. And in Hanick v. Marion County, 312 Mo. 73, 278 S. W. 730, 732, recovery on contract fully completed by the contractor (plaintiff) was denied because it was not let upon competitive bids. \* \* \* \* \*"

#### CONCLUSION

With the foregoing preliminary statements in mind, we will answer your questions in the order submitted.

#### I.

Who should be named parties defendant? In answer to this question we will say that if a person has a suit on warrants described in the first paragraph of your letter that the county should be made the party defendant. However, you will note from our preliminary statement it would seem that a person would not have a cause of action on such warrants.

II.

What court has jurisdiction? We think Section 12108 R. S. Missouri, 1929, answers this question and it is as follows:

"All actions whatsoever against any county shall be commenced in the circuit court of such county, and prosecuted to final judgment and execution therein, unless removed by change of venue to some other county, in which case the action or actions so removed shall be prosecuted to final judgment and execution in the circuit court of such other county."

III.

Are these warrants a legal obligation of the district? In answer to this question we will say from what we have stated above, these warrants are not legal obligations of the general road district.

IV.

If the 1936 warrants are paid out of the 1938 revenue, what is the treasurer's liability, if any? (The 1936 warrants being contracted in excess of the 1936 revenue.) The 1936 warrants being issued in payment of obligations which were incurred in excess of the revenues for that year are void and the treasurer would be held liable for the payment of the same out of 1938 revenues. In support of this rule we refer you to the case of Cook v. Putnam County, 70 Mo. 668, wherein the rule is stated:

"A county treasurer who pays a warrant when there is no money in the fund on which it is drawn, cannot recover the amount from the county, and it does not matter that the payment was made at the instance of the

county court and upon their promise to make good the amount, nor that the warrant was received from the treasurer and canceled by the court."

V.

Does the writing of these warrants constitute the appropriating of money not authorized by law? In answer to this question we find the rule stated in 15 Corpus Juris, page 586, section 289, in the following language:

"\* \* \* By an appropriation is meant the setting apart or the voting of a sum of money to a particular object, \* \* \* \* \*"

Therefore, the setting apart of the money and voting the same and issuing a warrant therefor would constitute an appropriation of the money and if it is in excess of the amount allowed by law, then the writing of these warrants would constitute the appropriation of money not authorized by law.

VI.

If a judgment was obtained, how could it be paid if the revenue of the year the warrant was issued was exhausted? In answer to this question, as we have stated herein a judgment could not be obtained against the various districts, and if any judgment at all were obtained it would be against the county. A judgment could not be obtained against an obligation which has been incurred in violation of the provisions of Article X, section 12 of the Constitution hereinbefore cited. The Supreme Court, in the case of Hillside Securities Co. v. Minter, 300 Mo. 380, l.c. 398, in speaking of a contract which was entered into by the county court without authority, said:

"To permit recovery under such contract for the reasonable value of the work done thereunder by denying injunction

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sought by a taxpaying citizen, would be to permit the county to do indirectly that which it is forbidden to do directly and would furnish a ready means of evading the law. Such course of action may not be sanctioned."

However, if for any cause a judgment were obtained, then under the general rule as to obligations of the county, such a judgment might be paid from the road revenues of the year in which such judgment is obtained.

VII.

Have you any suggestions as to how the situation should be handled? As to this question, I think that the suggestions we have heretofore made will take care of the answer.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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(Acting) Attorney General

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