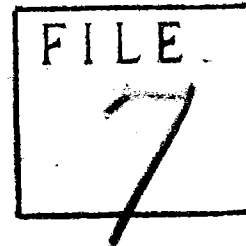


ROADS AND BRIDGES: County may finance the improvement of roads in common road districts out of surplus road funds.

August 25, 1941

2/42  
Mr. G. A. Berry  
County Clerk  
Miller County  
Tuscumbia, Missouri



Dear Sir:

This Department is in receipt of your request for an official opinion, which reads as follows:

"May the County Court finance the grading and improvement of roads in certain common road districts if such districts do not have the necessary funds? The county does have sufficient money budgeted for such work. Miller County has not adopted township organization."

The general rule is given in 29 C. J., page 583, as follows:

"The construction, improvement and repair of highways is regulated largely by statute, the general rules relating to statutes being applicable, as to constitutionality and construction, which must be reasonable. \* \* \*"

We must, therefore, look to the statutes to determine whether a county has the right to repair and maintain a road within the confines of a road district.

Section 8513, R. S. Mo., 1939, provides as follows:

"All taxes derived from the levy authorized by section 8526, are hereby appropriated to the use of the county court in each county where levied, to be used at the discretion of said court for the construction and maintenance of roads and bridges located within the confines of the county highway system herein provided for as well as all other roads and bridges in such county."

Section 8526, R. S. Mo., 1939, referred to in Section 8513, supra, reads:

"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.'"

The road funds received under Section 8526, supra, must be returned to the special road district in which they are collected. (State ex rel. v. Burton, 283 Mo. 41, 222 S. W. 844; State ex rel. v. Barry County, 302 Mo. 279, 258 S. W. 710.) As was aptly said in Hawkins v. Cox, 334 Mo. 640, 66 S. W. (2d) 539, 1. c. 540:

"\* \* \* this special road district is entitled to whatever taxes are levied and collected on property within its boundaries, \* \* by the county court \*."

This return by the county court to the special road districts is mandatory, if application therefor is made by the commissioners. (Road District v. Phelps County, 116 S. W. (2d) 61.)

It is a rule of statutory construction that a legislature in passing a statute is presumed to have acted with full knowledge of judicial decisions under the pre-existing law. (Plater v. Mullins, 17 S. W. (2d) 658, 59 C. J. 1008.) Furthermore, a construction of a statute by the courts, supported by long acquiescence on the part of the legislature, is evidence that such construction is in accordance with the legislative intent. (59 C. J. 1037)

Section 8513, supra, was passed in 1927 (Laws of Missouri, 1927, page 421, Section 11a) and at the time of its passage what is now Section 8526, supra, had for more than fifteen years been interpreted to mean that the taxes collected on property within the limits of a special road district must be given to that road district. Therefore, the clause in Section 8513, which provides that the tax money could be used for "other roads and bridges in such county," must have meant that such money could be used "at the discretion of said court" for road purposes other than the roads of the county highway system and that given to the road districts.

We believe, therefore, that under Section 8513, supra, the county court may use any surplus in the "county road and bridge fund" for the use of any roads and bridges in the county. It will be noted that like power is given to the county in regard to bridges to aid road districts. Section 8534, R. S. Mo. 1939, provides:

"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."

Under the above statute it is also within the county court's discretion what bridges shall be maintained by the county and what by the road district.

Mr. G. A. Berry

-4-

Aug. 25, 1941

Conclusion

It is, therefore, the opinion of this Department that a county court may finance out of surplus road funds the grading and improvement of roads in common road districts.

Respectfully submitted,

ARTHUR O'KEEFE  
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APPROVED:

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