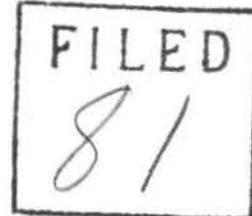


ROADS AND BRIDGES: Moneys in contingent fund may be used for roads in common road districts.

September 1, 1943

Hon. E. O. Shelton
County Clerk
Randolph County
Huntsville, Missouri



Dear Mr. Shelton:

Your letter of August 30th addressed to the Attorney-General has been received and has been referred to me. In your letter you request an opinion of this office, which request, omitting caption and signature, is as follows:

"The members of the Randolph County Court have instructed me to write you and ask for an opinion about whether it is legal to use money from the Contingent fund to pay for material or labor used in road work.

"As you already know we have a .22 Special Road Tax and .01 Road & Bridge Tax which is divided according to assessed valuation in our eight Special Road Districts and two Common Road Districts.

"Our Road District #2 is quite a bit in debt and would like to know if it would be legal to use money out of the Contingent fund to pay off this indebtedness."

We note from your letter that you have in your county eight special road districts and two common road districts and your letter does not state in which class road district No. 2 is. Therefore, for the purposes of this opinion, we will assume that Road District No. 2, which is in question in this opinion request, is a common road district.

The money to be used for the upkeep of roads in the various counties can be obtained by three different methods as far as common road districts are concerned. The first method is that set out in Section 8522, R. S. Mo. 1939, in subsection "(c)", which prescribes the following:

"For the purpose of carrying out the provisions of this article there is hereby levied in addition to all other road tax upon all real estate not incorporated within the limits of any city, town or village a special benefit tax of twenty cents per hundred dollars valuation on all land abutting upon or lying within one-half mile of any public road, and ten cents per hundred dollars valuation on land lying more than one-half mile and up to one mile of any public road and five cents per hundred dollars valuation on all land lying more than one mile and up to one and one-half mile from any public road, which benefits shall be spread upon the road overseer's books by the clerk of the county court giving the name of the owner of each tract as it appears upon the assessor's books the description of the land and the benefits charged set opposite each tract which benefit tax books with blank receipt books shall be delivered to the road overseers of their respective districts on or before the 15th day of May of each year, which books may also contain the names of those subject to poll tax; the said overseers before entering upon their duties shall give a good and sufficient bond payable to the county treasurer in a sum equal to the amount of benefits charged against the land in their districts: Provided, that no tract of land lying within the radius of a public road as prescribed in this section shall be taxed in excess of twenty cents on the hundred dollars valuation for any one year."

The money thus obtained under the above cited statute is placed under the control of the road overseer of the common road district from which the money is collected. He is, of course, bonded for the faithful performance of his duties pertaining to the disbursements of these particular funds. These funds are all used for the upkeep and maintenance of the roads in the particular district from which they are obtained.

Another method by which funds may be obtained for the upkeep of the roads in the county is provided for in Section 8526, R. S. Mo. 1939, which is 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.'"

This is the statute under which the general road and bridge fund of the county is set up. This fund can be supplemented by a special tax which can be levied in conformity with Section 8527, R. S. Mo. 1939, which provides the following:

"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."

In an opinion written by one of the Assistants in this department in April, 1942, it was held that if a common road district depleted its funds for the upkeep of roads in such district, that the county court could augment such funds from money from the county road and bridge fund. In such opinion it was stated that the amount collected by the overseers in the various common road districts was never sufficient to take care of the maintenance of the roads and in view of the fact that such overseer was acting for the county in this matter that the county was then permitted to take money from the road and bridge fund to aid and assist the common road districts in the maintenance

and upkeep of the different roads. Consequently, this additional money paid by the county must come from funds collected under the provisions of Section 8526 and 8527, R. S. Mo., 1939.

We are now confronted with the question as to which fund or class, as set up in the county budget, such additional funds are to be taken. Shall they be paid from Class 5, which is the contingent fund, or from one of the other five classes set up in the aforesaid budget?

In the statutes of 1939 we find Section 10911 which related to the classification of expenditures as set out in the various county budgets. The third class set out therein provided as follows:

"Class 3: 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."

In examining the statutes of 1939 we further find the following provision under Section 10914 in the classes of expenditures which also applies to the county budget, and we find that Class 3 under such statute provides as follows:

"Class 3: Repair and upkeep or replacement of bridges on other than state highways and not in any special road district. List bridges."

It will be noted that in the two preceding statutes, the provisions only specify "bridges," but in 1941 House Bill No. 466 was introduced and passed, repealing Sections 10911 and 10914, supra, and in lieu thereof set up two new sections numbered the same as the above repealed sections. These new sections provide the following as to Class 3:

(Section 10911, Laws of Mo., 1941, p. 650)

"Class 3. The county court shall next

set aside and apportion the amount required, if any, for the unkeep, repair or construction of bridges and roads on other than state highways (and not in any special road district). The funds set aside and apportioned in this class shall be made from the anticipated revenue to be derived from the levies made under Sections 8526 and 8527, R. S. Mo. 1939. This shall constitute the third obligation of the county."

(Section 10914, Laws of Mo., 1941, p. 652)

"Class 3. Repair, upkeep and construction of roads and bridges on other than state highways and not in any special road district. List roads and bridges to be constructed."

It is apparent from the action of the Legislature above that they intended that all moneys to be paid for the repair and maintenance of bridges and roads was to be paid from Class 3 under the county budget. Therefore, as long as this particular class has money to its credit, any aid and assistance in the maintenance of the roads in the common road districts would be taken from Class 3 in the county budget.

We also find that Class 5 in the county budget, and also reported at page 652 of the Laws of Missouri, 1941, provides the following:

"Class 5. Contingent and emergency expense.--The county court may transfer any surplus funds from class 1, 2, 3, and 4 to class 5 to be used as contingent and emergency expenses. Purposes, for which the court proposes the funds in this class shall be used, shall be shown."

If the funds in Class 3 aforesaid should be depleted and it is necessary that roads in one or more of the common road

districts be repaired, and such condition is an emergency, it is our opinion that the county court has the authority to allocate out of the contingent fund sufficient moneys to repair the roads in the common road districts. However, the funds in Class 3, as set up in the budget, must be used before the contingent or emergency measure funds under Class 5.

Conclusion.

Therefore, it is the opinion of this Department that moneys can be paid from the contingent fund for the maintenance of roads in a common road district, but only after the funds allocated to Class 3 under the county budget have been depleted.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
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JSP:EG