

COUNTY COURTS: Two questions on power of county court to make purchases for road equipment and road expenditures.

April 19, 1943



Honorable George A. Spencer  
Prosecuting Attorney  
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Dear Sir:

We are in receipt of your opinion request dated April 10, 1943. The first question in your letter reads as follows:

"I would like to know your opinion as to whether or not the County Court can order equipment or parts for equipment and exercise supervisory authority over the purchase of such equipment or parts for machinery and so forth used on roads, their construction and maintenance."

From your letter it seems that the highway engineer and the county court seek superiority over each other. Section 36, Article VI of the Constitution of Missouri authorizes the county court as follows:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

Concerning the relation of the county court to county property, Section 2480, R. S. Missouri 1939, provides as follows:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

The difficulty which has arisen, apparently, is due to the construction of Section 8662, R. S. Missouri 1939, in relation of the highway engineer to the county court. This section provides as follows:

"The county highway engineer shall have direct supervision over all public roads of the county, and over the road overseers and of the expenditure of all county and district funds made by the road overseers of the county. He shall also have the supervision over the construction and maintenance of all roads, culverts and bridges. No county court shall order a road established or changed until said proposed road or proposed change has been examined and approved by the county highway engineer. No county court shall issue warrants in payment for road work or for any other expenditure by road overseers, or in payment for work done under contract, until the claim therefor shall have been examined and approved by the county highway engineer."

An analysis of this section, in the opinion of this office, expressly shows that it limits the powers of the county highway engineer to the following powers. First, the highway engineer has "direct supervision" over public roads within the county. Secondly, "direct supervision over expenditures by the road overseers." Thirdly, the highway engineer has supervision over the construction and maintenance of the roads, bridges and culverts. Fourthly, a limitation is imposed on the county court not to

order a road established or changed unless such move is approved by the highway engineer. Fifth, the county court shall not issue warrants "in payment for road work or for any other expenditures by road overseers, or in payment for work done under contract, until the claim" is approved by the highway engineer. In view of these express powers it, apparently, was not the intention of the legislature to vest any other powers in the county highway engineer. The legislature specifically enumerated the powers so given to a county highway engineer in Section 8662, supra, and there is no mention of any power of purchase in the county highway engineer.

Under Section 2480, cited and quoted, the purchasing power is vested in the county court. A previous opinion of this office, herewith attached, rendered December 22, 1942, to the Honorable John H. Thompson, so holds.

#### CONCLUSION

It is the conclusion of this office in answer to your first question, that the powers of a county highway engineer are specifically enumerated and limited under Section 8662, supra, and said powers do not include the power to purchase or order equipment or parts for equipment for machinery used on the county roads, in their construction and maintenance.

In an answer to your second question, which reads as follows:

"The other question would relate to the expenditure of funds for the actual work of building and maintaining roads. In other words, are each of these a primary duty of the engineer and a secondary duty of the county court, or can the Court proceed without the approval of the engineer in either instance."

We believe that "the expenditure of funds for the actual work of building and maintaining roads" must be made by the county court, subject to the limitation of the last sentence of Section 8662, supra, which provides:

"\* \* \* \* \* No county court shall issue warrants in payment for road work or for any other ex-

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penditure by road overseers, or in payment for work done under contract, until the claim therefor shall have been examined and approved by the county highway engineer. "

Thus any expenditures by road overseers must be approved by the county highway engineer before the county court can issue warrants in payment of such expenditures. Apparently, the primary duties rest upon the county court in all instances other than those enumerated in Section 8662, supra.

#### CONCLUSION

Our conclusion, in answer to your second question, is that unless the expenditure has been made by a road overseer the county court has the primary duty under Section 2480, supra, to make payments for the expenditures mentioned in your second question.

Respectfully submitted

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APPROVED:

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ROY McKITTRICK  
Attorney General of Missouri

WCB:KAW