

COUNTY COURT: May expend county funds to repair and con-
COUNTY BUDGET: struct bridges in special road districts, but
only out of Class 6 of the County Budget Law.

January 24, 1945

Mr. Forrest Smith
State Auditor
Jefferson City, Missouri

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Dear Sir:

Recently you requested an opinion upon the following:

"We request an official opinion as to whether or not the county court has authority to appropriate money out of county revenue funds under section 8688 R. S. Mo., 1939, to be used in special road districts and if so to what class of the budget should the appropriation be made."

Section 8688, R. S. Mo. 1939, is a portion of Article 10, Chapter 46. The article provides for the establishment, management and authority for special road districts, commonly denominated "eight mile special road districts." The pertinent portion of Section 8688 is as follows:

"* * * Provided, however, that the county court of the county in which said special road district is located may, in its discretion, out of the funds available to it for that purpose, construct, maintain, or repair, any bridge, or bridges, or culvert or culverts in such road district, or districts, or it may, in its discretion, appropriate out of the funds available for that purpose money to aid and assist the commissioners of said special road district, or districts, which shall be expended by the commissioners of said special road district, or districts, as above provided."

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The Supreme Court of Missouri, in the case of State ex rel, Moberly Special Road District v. Burton, 182 S. W. 746, 266 Mo. 711, held the above section to be a valid enactment and specifically ruled that the above quoted portion of the statute, which authorizes county courts to appropriate county funds to the district, was likewise effective. In the above decision the following language is found (266 Mo. 1. c. 722):

"The power of the Legislature in the creation of municipalities and public corporations of every description is not only absolute but unlimited in the absence of constitutional inhibitions. In the presence of this power we must presume that in the creation of the special road districts the Legislature deemed them necessary, expedient and in the public interest. Thus formed, authority exists as a necessary consequence of legislative power, to provide means for their perpetuation or maintenance or their change or abolition, as in the wisdom of the Legislature seems best. (Harris v. Bond Co., 244 Mo. 664.)"

That portion of the County Budget Act which applies to counties under 50,000 inhabitants (Section 10911, Laws of 1941, p. 650) specifically removes roads and bridges in any special road district from Class 3. Roads and bridges in special road districts are not mentioned in any other classification.

On June 21, 1933, this Department ruled that county courts may pay the expense of constructing, maintaining and repairing bridges in this type of special road districts, but only out of funds appropriated to Class 6. That opinion is specifically adopted and a copy is hereto attached.

CONCLUSION

In the opinion of this Department, while a county court may, in its discretion, appropriate county funds for the construction, maintenance or repair of bridges and culverts in the special road districts to which Section 8688, R. S. Mo.

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1939, applies, such expenditures may be made only from the funds set aside in Class 6 of the County Budget.

Respectfully submitted,

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APPROVED:

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VCT:CP