

ROADS AND BRIDGES } County Court has no authority to advance money to  
Special Road District organized under Article 11,  
Chapter 46, R. S. Missouri, 1939, for construction  
of a bridge.

February 20, 1950

FILED NO. 12



Honorable William F. Brown  
Prosecuting Attorney  
Pettis County  
Sedalia, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"One of the Special Road Districts in Pettis County, which is organized under Article 11, Chapter 46, has critical need for a bridge and have no money in their treasury. Their anticipated revenue for this year is \$600.00 and the estimated costs of the bridge is \$3,000.00.

"Our County Court has sufficient money and anticipated revenue to give them the required amount of assistance, however the County Court would like to be advised as to their right to advance the money to this Special Road District. If they are legally authorized to advance the money they would also like to be informed as to whether the money should be appropriated out of Class 3 or as an emergency appropriation out of Class 6."

Section 8714, R. S. Missouri, 1939, found in Article 11 of Chapter 46, provides:

"The county court shall, upon the organization of such commissioners, cause all tools and machinery used for working roads belonging, to the districts formerly existing and composed of territory embraced within the incorporated district to be delivered to said commissioners, for which such commissioners shall give a receipt, and such

Honorable William F. Brown

commissioners shall keep and use such tools and machinery for constructing and improving public roads and bridges. Said commissioners shall have sole, exclusive and entire control and jurisdiction over all public highways, bridges and culverts within the district, to construct, improve and repair such highways, bridges and culverts, and shall have all the power, rights and authority conferred by law upon road overseers, and shall at all times keep such roads, bridges and culverts in as good condition as the means at their command will permit, and for such purpose may employ hands and teams at such compensation as they shall agree upon; rent, lease or buy teams, implements, tools and machinery; all kinds of motor power, and all things needed to carry on such work: Provided, that said commissioners may have such road work, or bridge or culvert work, or any part thereof, done by contract, under such regulations as said commissioners may prescribe."

(Underscoring ours.)

We find no provision authorizing the county court to assist a special road district organized under Article 11 of Chapter 46, in the construction of bridges within such district. There is express provision for the county courts doing so insofar as special road districts organized under Article 10 of Chapter 46 are concerned. Section 8688 of that article provides:

"Said board may, by contract or otherwise, under such regulations as the board shall prescribe, build, repair and maintain, or cause to be built, repaired, or maintained all bridges and culverts needed within said district: 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,

Honorable William F. Brown

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."

In the case of Lancaster v. County of Atchison, 180 S.W. (2d) 706, l. c. 708, the court stated:

"The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void.' Sturgeon v. Hampton, 88 Mo. 203, loc. cit. 213. Quoted with approval in the case of Morris et al. v. Karr et al., 342 Mo. 179, 114 S.W. 2d 962, loc. cit. 964.

"Both parties to this suit agree that counties, like other public corporations, 'can exercise the following powers and no others: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation--not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied.' \* \* \*"

Inasmuch as the authority of the county court is limited in this matter, we feel that in view of the absence of any provision authorizing assistance to special road districts organized under Article 11 of Chapter 46, the county court has no authority to advance county funds to such road districts. Such being our view of the matter, there is no necessity for consideration of the question of the class of the county budget from which the funds might be advanced, if the county court had the authority to do so.

Honorable William F. Brown

CONCLUSION

Therefore, it is the opinion of this department that the county court has no authority to advance to a special road district, organized under Article 11, Chapter 46, R. S. Missouri, 1939, money for the construction of a bridge within such district.

Respectfully submitted,

ROBERT R. WELBORN  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General