

ROAD DISTRICTS:
COUNTY COURTS:
COUNTIES:
ROADS AND BRIDGES:

Both a County Court and Special Road District (authorized under Section 233.010 RSMo 1959) may expend funds, under authority of Section 234.210 RSMo 1959, to finance a preliminary engineering survey, the purpose of which is to determine the feasibility of constructing an inter-state bridge across the Mississippi River.

November 8, 1961



Honorable Earl R. Blackwell
State Senator, 22nd District
Hillsboro, Missouri

Dear Senator Blackwell:

We are in receipt of your request for an opinion of this office which reads as follows:

"Can a Special Road District and/or a County Court contribute toward a fund for an engineering survey, the purpose of which survey is to determine the feasibility of constructing a bridge across the Mississippi River?"

"By way of further explanation, it should be stated that the Bi-State Agency has expressed an interest in assuming the project for constructing a bridge across the Mississippi River to link Jefferson County, Missouri, with Monroe County, Illinois. However, before the project can begin, a preliminary engineering survey must be completed to determine the feasibility of such a bridge. An amount of \$15,000.00 is needed for this preliminary survey, and the Bi-State Agency has stated that the two counties must raise the funds for said survey inasmuch as the Agency has neither the power nor the money for such a survey. It should also be stated that if the feasibility survey is favorable, and the bridge is ultimately constructed, the money which was expended for the survey will be returned to the contributors.

Honorable Earl R. Blackwell

"Trusting I may have an opinion from your office on the above question, I remain"

In an additional letter to us under date of October 24, 1961, you stated that the road district involved was of the type authorized by Section 233.010 RSMo 1959.

We first direct your attention to the sections of the Missouri statutes which deal with the authority of road districts and county courts to build interstate bridges. Section 234.210 RSMo 1959 reads as follows:

"Any county, municipality, road district, political or civil subdivision of a county or of the state, severally or acting with other authorized agencies in this or adjoining states, may acquire, own and operate, construct, or aid in the construction, in whole or in part, improve or extend, and maintain toll bridges, including the approaches thereto, either within or adjacent to the territory over which such public agency has jurisdiction and over any of the rivers and waters in or forming the boundary between this and other states."

Section 234.090 RSMo 1959 reads as follows:

"1. If a bridge or bridges be necessary over any river, stream or watercourse forming the boundary line or part of the boundary line between the state of Missouri and any adjoining state or states, the county courts of the counties of this state bordering on such river, stream or watercourse may unite with such adjoining state or the proper authorities of any county in such adjoining state for building such bridge or bridges and the expense thereof shall be defrayed by such county of this state and the adjoining state or county therein in such proportion as may be agreed upon.

"2. The plans and specifications for such bridge or bridges shall be prepared and the contract let and construction supervised by some competent person who may be agreed upon by the respective interested

Honorable Earl R. Blackwell

authorities; provided, that private subscriptions may be received by the county courts of such counties in this state to defray in part or in whole the expenses of building such bridge or bridges; provided further, that for the purpose of defraying the expenses of building such bridge or bridges, or to create a fund with which to build any such bridge in the future, it shall be the duty of the county court in such county in this state, upon a petition signed by a majority of the taxpaying citizens of any township in which such bridge is located or is to be located, to levy on the taxable property in such township the full amount of the special road and bridge tax authorized by the first sentence of the first paragraph of section 12, article X of the Constitution of Missouri, and use the same solely for the purpose of defraying the expense of building such bridge or bridges or creating a fund for the future building thereof, and such fund, when inaugurated, shall be perpetuated until such bridge or bridges are built and the cost thereof is defrayed.

"3. The county court may appropriate moneys from the road and bridge fund of the county to pay the cost or part of the cost of building such bridges."

County courts have such power and authority as is expressly granted them or as can be necessarily implied from their express powers. King vs. Maries County (1923) 297 Mo. 488, 249 S.W. 418; Everett vs. Clinton County (1955) 282 S.W. 2d 30; 20 C.J.S., Counties, Section 82, p. 849. A similar rule applies to the powers of road districts, 39 C.J.S., Highways, Section 157, p. 1108.

We will therefore now turn to a consideration of Sections 234.090 RSMo, 1959, and 234.210 RSMo 1959 to see if authority for the project stated in your request is therein contained.

Honorable Earl R. Blackwell

We do not believe that authority for the project mentioned in your request can be found in Section 234.090 RSMo 1959. This section, in any event, applies only to county courts and not to road districts; but, still further, it authorizes county courts to unite, for bridge building purposes, only with an adjoining state or authorities of a county in an adjoining state. The Bi-State Development Agency does not fall within either of these categories.

We turn, therefore to a consideration of Section 234.210 RSMo 1959. This section authorizes both counties and road districts to "construct" or "aid in the construction" of toll bridges by acting in conjunction with agencies of the State of Missouri or of other states. An agreement with the Bi-State Development Agency would be within the terms of this statute.

Do either of the terms "construct" or "aid in the construction" include within their meaning a preliminary survey to determine the feasibility of building a bridge?

"Construct" was defined by the Missouri Supreme Court in the case of *State ex rel St. Louis County vs. State Highway Commission* (1926) 286 S.W. 1, 2, as follows:

"* * * 'construct' means to put together the constituent parts of something in their proper place and order * * *"

From the above definition it can be seen that "construct" means the actual erection, building or fabrication of an object. This word, therefore, would not confer authority on road districts and county courts to finance the preliminary survey mentioned in your opinion request.

We come then to a consideration of the phrase "aid in the construction".

The verb form of "construction" has been above defined. The word "aid" is defined in *Black's Law Dictionary*, 4th Edition, 1951, p. 91, as follows:

"To support, help, assist, or strengthen. *Hines v. State*, 16 Ga. App. 411, 85 S.E. 452, 454.
Act in cooperation with. *Cornett v. Commonwealth* 198 Ky. 236, 278 S.W. 540, 542."

In the case of *Marsch v. Bartlett* (1938) 343 Mo. 526, 121 S.W. 2d 737, the Missouri Supreme Court gave a similar definition for the

Honorable Earl R. Blackwell

word, although it was there used in a different context. In construing a constitutional amendment concerning the Conservation Commission and authorizing the General Assembly to pass legislation "in aid" of the provisions of the amendment, the court said that the term signified support, help, and assistance.

To "aid in the construction" of a bridge, therefore means to assist or help in the erection, fabrication or building of a bridge. It is the opinion of this office that by participating in the preliminary survey mentioned in your request, the road district and county court involved would be assisting in the building of the bridge. The actual erection of the bridge must be preceded by a survey to determine its feasibility. This necessity brings the proposed survey within the statute, specifically with the terms "aid in the construction".

CONCLUSION

It is the opinion of this office that both a county court and a special road district organized under Section 233.010 RSMo 1959 have authority to contribute toward a fund for an engineering survey, the purpose of which is to determine whether it is feasible for the Bi-State Development Agency to construct a bridge across the Mississippi River.

The foregoing opinion, which I hereby approve, was prepared by my assistant Ben Ely, Jr.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

EE:ms