

ROADS: Funds made available by the County Court and
SPECIAL ROAD DISTRICTS: funds from the county aid road fund (King Bill
KING BILL ROAD: Road Law) may be used to construct an approved
COUNTY AID ROAD FUND: road regardless of whether such road lies
wholly or in part in a special road district.

June 28, 1961



Honorable Charles P. Moll
Prosecuting Attorney
Franklin County
Union, Missouri

Dear Mr. Moll:

This is in answer to your letter of February 24, 1961, requesting an opinion of this office which reads in part as follows:

"The Franklin County engineer has laid out a king bill road, part of which, approximately a mile or so, is within a special road district. I have been approached by the County Court with the following question:

'Can a county of the third class build a king bill road within the boundary of a special road district and use State Funds as part of the cost of the construction of said road?'"

By "King Bill Road", we assume you refer to a road constructed under a program of the county aid road fund under the provisions of Section 231.440 to 231.500 RSMo 1959. In answering your question we shall consider various sections of that law.

Section 231.465 provides as follows:

"Township boards or special road districts may agree and contract with the county court in which such township or road district lies for payment to the county court of the money necessary to provide the county court's contribution

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to any project as provided by sections 231.440 to 231.500. The funds required by such contract shall in all cases be deposited with the county court in a special fund prior to the commencement of the work."

Section 231.470 RSMo 1959 provides for the county court of each county to formulate and maintain a program for the improvement, construction or reconstruction and restoration of county roads, and provides that programs for construction, reconstruction or maintenance together with the plans, specifications and estimates for each project shall be submitted to the state highway commission for approval. Section 231.490 also requires approval of each project by the state highway commission.

The "county roads" referred to in Section 231.470 RSMo 1959 are defined in subsection 3 of Section 231.560 RSMo 1959 as follows:

"'County roads' as used in sections 231.440 to 231.500 means all public roads located within any county, except roads or highways constructed or maintained as state roads or highways, and except roads, streets, or highways in incorporated villages, towns, or cities."

Since the only specific exemptions contained within this definition of county roads are for state roads or highways and roads, streets, or highways in incorporated villages, towns, or cities, it necessarily follows that all other public roads located within a special road district are included in the definition of "county roads" as used in these sections concerning the county aid road fund.

Section 231.473 RSMo 1959 provides in part as follows:

"Allocations for construction, reconstruction and restoration from the county aid road fund shall not exceed two-thirds of the total cost of any project with the remaining expense to be borne from other funds made available by the county court."

From these sections it can be seen that the state highway commission, in administering the county aid road fund, deals exclusively with the county court. It would also be noted that there is no restriction on the source of the funds for the share of the county court for the construction of any such

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road. Rather, this statute provides that the remaining one-third of the cost shall be borne from "other funds made available by the county court." Section 231.465 RSMo 1959, quoted above, provides that township boards or special road districts may agree and contract with the county court in which such township or road district lies for payment to the county court of the money necessary to provide the county court's contribution to any project as provided by Sections 231.440 to 231.500.

Since a special road district may contribute to the County Court the county's portion of the cost of the road, it is implicit in Section 231.465 RSMo 1959 that roads may be constructed under Sections 231.440 to 231.500 RSMo 1959 which lie wholly or in part in a special road district. Furthermore, since a road lying wholly or in part in a special road district in any county is included in the definition of "county roads" used in connection with the county aid road fund, we conclude that it is proper to use funds made available by the county court and funds from the county aid road fund to build a road lying wholly or in part in a special road district under an approved project or program of the county aid road fund law or "King Bill" road law.

CONCLUSION

It is therefore the opinion of this department that funds made available by the county court and funds from the county aid road fund may be used to construct an approved road project or program under Sections 231.440 to 231.500 RSMo 1959, regardless of whether or not such road lies wholly or in part in a special road district.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Wayne W. Waldo.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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