

July 10, 1962



Honorable Bill Davenport  
Prosecuting Attorney  
Christian County  
Ozark, Missouri

Dear Mr. Davenport:

In response to your opinion request of March 12, 1962, concerning the county's obligation to pay for the recording of right-of-way deeds for public roads, and your further question about which fund the payment should be charged against, we are, hereby, answering.

As you pointed out in your letter of May 25, 1962, there is no specific authority directing the county to pay for the recording of right-of-way deeds, but there is general authority given to the county to establish a road at the county's expense in Section 228.050, RSMo 1959:

"2. . . . If the (county) court shall find that the facts do justify the establishing of such road, either at the expense of the county, or of the petitioners, or both, it shall make an order accordingly."

The recording of right-of-way deeds is a necessary expense in the establishing of roads as deeds affecting real estate are required to be recorded by Section 442.380, RSMo 1959. So if the county court then orders the county to bear the expense of establishing a road then it shall bear the cost of recording of right-of-way deeds.

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Class four counties such as Christian County must classify their expenditures into six classes under Section 50.680, RSMo 1959, which provides in part:

"The court shall classify proposed expenditures in the following order:

\* \* \* \* \*

Class 3. The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or construction of bridges and roads on other than state highways (and not in any special road district) . . .

Class 5. . . . a fund for the contingent and emergency expense of the county, the court may transfer any surplus funds from classes one, two, three, four to class five to be used as contingent and emergency expense. From this class the court may pay contingent and incidental expenses . . . not otherwise classified."

On its face it would look as though class 3, supra, would be controlling in this case as recording of right-of-way deeds can be included in the "amount required . . . for the . . . construction . . . of roads on other than state highways (and not in any special road district). But the Supreme Court of Missouri held in *Everett v. County of Clinton*, 228 SW2d 30 (Mo. 1955) that when the county bought road graders, it was not necessary to use class 3 but class 5 could be used.

"The purchase price of road machinery was clearly not required to be budgeted under the head of proposed expenditures for repair, upkeep and construction of roads and bridges. The necessity for replacement of such road machinery was in the nature of 'current expenses of the county' and as such was payable out of general revenue as a class 5 expense, if so budgeted and provided for."

Substituting "recording of right-of-way deeds" for "road graders", the conclusion is reached that if the county so provides

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in the budget, then either class 3 or class 5 may be used. Class 3 because recording of right-of-way deeds is a necessary incident in the establishment and construction of roads. Class 5 because it is a "contingent and incidental" expense not otherwise classified.

It is also possible, if the requirement is met of having actual cash on hand sufficient to pay all claims against the prior five classes, to pay this out of class 6 of Section 50.680, supra, which provides:

"Class 6. After having provided for the five classes of expenses heretofore specified, the county court may expend any balance for any lawful purpose, provided however, that the county court shall not incur any expense under class six unless there is actually on hand in cash funds sufficient to pay all claims provided for in preceding classes together with any expense incurred under class six; provided, that if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under class six."

Therefore, it is my belief that the county may pay for the recording of right-of-way deeds out of either class 3 and class 5 funds if so provided or from class 6 funds if the requirement is met.

Yours very truly,

THOMAS F. EAGLETON  
Attorney General

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