

August 16, 1965



Honorable Kenneth R. Babbit  
Prosecuting Attorney Stone County  
Box 185  
Galena, Missouri

Dear Mr. Babbit:

This letter is in answer to your request for an opinion of this office on the questions which you have stated as follows:

"Our public use areas in Stone County are owned by the Government, and the Government enters into leases with various persons for boat docks, and other commercial businesses within that use area. Under Sec. 12.080, it appears that the Government is to pay the state 75 per cent of all monies received from these leases. Sec. 12.070 indicates that 75 per cent of this money is to go to public schools, and 25 per cent for roads.

"Section 12.100 provides for the method in which the county court shall use these funds.

"Our problem is this.

"1. Does the county court distribute the money for the roads to the road districts in which these public use areas are located for them to use on the roads, or is the county to maintain the roads with this money itself.

Honorable Kenneth R. Babbit

"2. Can this money be used only for the maintenance and improvement of that particular road leading to the public use area.

"3. Is the amount of money to be used on the roads to be based upon the amount of money the Government receives from the leases of each particular public use area, by the assessed valuation by the county assessor of the personal property of these commercial enterprises within the public use area, or by an evaluation of the amount of land within the public use area including the buildings, boat docks, etc."

We enclose a copy of the opinion of the Attorney General to J. S. Wallace, dated March 1, 1956, which bears on these topics.

Section 12.070 RSMo 1959, is concerned with national forest reservations in the State of Missouri. We understand that the situation involved in your inquiry does not pertain to forest reservations. The land owned by the United States in Stone County is under the Flood Control Act, considered in Section 12.080, RSMo 1959. By virtue of said Section 12.080 and Section 12.100, RSMo 1959, the moneys involved in your inquiry do not have to be allocated 75 per cent to public schools and 25 per cent for roads.

Section 12.080 RSMo 1959 states:

"All sums of money received from the United States, or any department thereof under an act of congress approved August 18, 1941, being an act providing for the payment to the several states of seventy-five per cent of all moneys received for leases of land situated in the various states to which the United States owns fee simple title under the Flood Control Act of May 15, 1928, as amended and supplemented (33 U.S.C.A. §701c-3,) to be expended as the general

Honorable Kenneth R. Babbit

assembly may prescribe for the benefit of the public schools and public roads of the county in which the government land is situated, or for defraying any of the expenses of county government in the county, including public obligations of levee and drainage districts for flood control and drainage improvements, or as provided by any acts of congress authorizing the distribution of income or revenue from lands owned by the United State of America or any of its departments, bureaus or commissions or any agency of the United States of America, to states or counties or as provided by any amendments to those acts, shall be expended as the county court of the county entitled to receive the funds directs in accordance with the provisions and regulations provided by the acts of congress for distribution to states and counties."

Section 12.100 RSMo, provides:

"The county court of each county receiving any such moneys shall use the funds to aid in maintaining the schools and roads and for defraying any of the expenses of the county in accordance with the provisions set forth in sections 12.070 and 12.080. The county court shall allow to the school districts and for roads an amount based upon their respective levies equal to that which would ordinarily be allowed to them out of taxes from property owned by the United States if the property were privately owned before using any of the moneys for defraying other expenses of the county."

Under these statutes, property owned by the United States in the county from which the United States has received rent,

Honorable Kenneth R. Babbit

part of which has been paid to the State of Missouri under the Flood Control Act of the United States, should be evaluated as if it were privately owned and the hypothetical revenue which would have been received by school districts and the county for road purposes should be computed. The amount thus computed should be spent for schools and roads out of the money received by the county under Section 12.080, supra, before spending any such money on county purposes other than roads and schools. Any amount remaining over and above the amount so computed may be spent for county purposes in the discretion of the county court.

Neither the cited statutes nor any other statutes relating to county roads restrict the allocation of the funds involved. Therefore, the county court may in its discretion use these funds upon roads in the county.

Section 12.100 and Section 12.080 do not restrict the use of such money to the maintenance and improvement of the particular roads in or leading to the public use area.

In summary, and answering your questions directly, the county court may use that part of the money received which is to be devoted to maintenance and improvement of roads in its discretion upon the roads in such county. Further, such money may be used for any roads in the county, regardless of whether they are in or lead to the government land. Further, of such money received by the county, the county court should allocate to the school districts and for roads the amount based on their respective levies equal to that which would be allowed to them (i.e. the school districts and for roads) out of taxes from property owned by the United States if the property were privately owned.

Such amounts must be spent on schools and roads before using any of such money for other county purposes.

Yours very truly,

NORMAN H. ANDERSON  
Attorney General

DLR/sj

Enclosure