ROADS AND STREETS:
ROADS:
STREETS:
COUNTY COURTS:

Money apportioned to Cass County as provided by Article IV, Section 30 (a), Constitution of Missouri, may not be expended on roads or streets under the jurisdiction or control of Belton, Missouri.

OPINION NO. 34 (1966)
OPINION NO. 350 (1965)

March 17, 1966

FILED
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Honorable Carl D. Gum
Prosecuting Attorney
Cass County
Harrisonville, Missouri 64701

Dear Mr. Gum:

This is in answer to your request for an opinion reading as follows:

> "I have been requested to ask you, 'whether or not a third class county can expend motor vehicle tax money within an incorporated city, town or village, under the provisions of Article 4, Section 3 (a)?'
>
> "A situation has arisen because the city of Belton occupies practically the entire township, and an equal distribution of county funds to each township to be expended outside incorporated areas means that Mt. Pleasant Township, in which Belton is located, will have far more money per mile than other townships. City officers in Belton would, of course, like to have this money expended within the city limits.
>
> "I have informed the city fathers that it is my opinion the money cannot be expended within incorporated areas. However, they requested that I write for an attorney general's opinion, which I am doing at this time. Thank you for your consideration in this matter."

Article IV, Section 30 (a), Constitution of Missouri, provides for a tax on motor vehicle fuel. This tax money, after deducting certain costs, "shall be apportioned between the counties, cities

and the state." Subdivision (1) of Subsection 1 provides for the portion going to the counties and reads in part as follows:

> "* * *The funds credited to each county shall be used by the county solely for the construction, reconstruction, maintenance and repairs of roads, bridges and highways, and subject to such other provisions and restrictions as provided by law. In the absence of other controls provided by law, the state highway commission shall prescribe policy, rules and requirement for the expenditure of these funds by counties, including, among other things, highway commission approval of plans for projects on which the funds are to be used. In counties having the township form of county organization, the funds credited to such counties shall be expended solely under the control and supervision of the County Court, and shall not be expended by the various townships located within such counties. 'Rural land' as used in this section shall mean all land located within any county, except land in incorporated villages, towns, or cities."

Subdivision (2) of Subsection 1 provides for the portion going to the cities and reads in part as follows:

> "Fifteen per cent of the remaining net proceeds shall be allocated to the various incorporated cities, towns and villages within the state having a population of more than two hundred according to the last preceding federal decennial census, solely for construction, reconstruction maintenance, repair, policing, signing, lighting and cleaning roads and streets and for the payment of principal and interest on indebtedness incurred prior to the effective date of this section on account of road and street purposes, and the use thereof being subject to such other provisions and restrictions as provided by law.* * *"

Our search of the laws of Missouri has revealed no statute directing how or where the counties' portion of the money is to be expended. Therefore, as provided by the constitutional provision, the money apportioned to the counties shall be expended according to the rules and regulations of the State Highway Commission.

Honorable Carl D. Gum

Section 2 of the rules and regulations reads as follows:

> "All money in the County Aid Road Trust Fund shall be expended for the construction, reconstruction, repair, and maintenance of roads and bridges in the County Road System as hereinafter provided."

Subsection (b) of Section 3 of the rules and regulations defines County Road System as:

> "* * *all public roads or highways in the county not under the jurisdiction or control of the State Highway Commission or any city, town, or village with a population of more than 200 persons according to the last official census."

According to the last official census Belton, Missouri, has a population of 4897. Therefore, the money apportioned to Cass County cannot be expended on roads or streets under the jurisdiction or control of Belton.

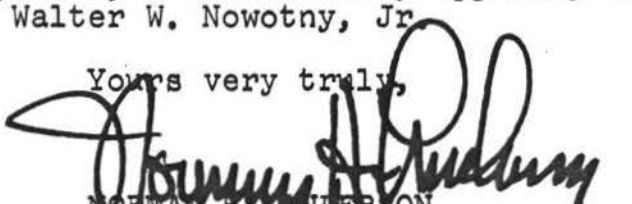
This rule and regulation is in keeping with the constitutional provision which allocates money separately to counties for "roads, bridges and highways" and to cities for "roads and streets".

CONCLUSION

It is the opinion of this office that money apportioned to Cass County as provided by Article IV, Section 30 (a), Constitution of Missouri, may not be expended on roads or streets under the jurisdiction or control of Belton, Missouri.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Walter W. Nowotny, Jr.

Yours very truly,



NORMAN H. ANDERSON
Attorney General