

COUNTY COURTS:  
CITIES, TOWNS AND VILLAGES:  
ROADS:  
STREETS:

A county court may expend monies from its Class 6 funds on streets of cities, towns and villages only when they are properly designated county roads and form a part of a continuous road or highway of said county leading into or through such city, town or village.

AMENDED OPINION NO. 131

May 26, 1966

Honorable Don Witt  
Prosecuting Attorney  
Platte County  
Platte City, Missouri



Dear Mr. Witt:

This opinion is in response to your inquiry concerning the right of a county court to expend county revenues from the general county levy on city streets within the county.

As you stated in your letter, we must assume that the other requisites of the statutes have been met.

The question is generated by the wording of subsection 6, of Section 50.680, RSMo Supp. 1965 (as it presently reads), which is set out below:

"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."

Revenue derived from taxes imposed for general revenue purposes by counties under Section 137.035, RSMo 1959, is the source of the funds in question. The question involves a determination whether the use of funds as detailed in your letter is a "lawful

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purpose" contemplated by Class 6, of Section 50.680 (supra).

We believe it to be accepted law in this state that the powers and authority of county courts are limited to their constitutional and statutory grants. Any acts outside of or beyond their authority are void. The Missouri Supreme Court in Lancaster v. County of Atchison, 180 S.W.2d 706, 708, expressed their views in the following words:

"[1] 'The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void.' Sturgeon v. Hampton, 88 Mo. 203, loc.cit.213. Quoted with approval in the case of Morris et al. v. Karr et al., 342 Mo. 179, 114 S.W.2d 962, loc. cit. 964.

"[2,3] Both parties to this suit agree that counties, like other public corporations, 'can exercise the following powers and no others: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation-- not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied.' Dillon on Municipal Corporations, 3rd Ed., Section 89. We have repeatedly approved this quotation. See State ex rel. City of Blue Springs v. McWilliams et al., 335 Mo. 816, 74 S.W.2d 363; State ex rel. City of Hannibal v. Smith, State Auditor, 335 Mo. 825, 74 S.W.2d 367, 372."

See also, St. Francois Co. v. Brookshire, 302 S.W.2d 1; State ex rel. Floyd v. Philpot, 266 S.W.2d 704.

We can find statutory authority for the continuous road concept or use of county funds on certain streets in cities, towns and villages in section 108.120, RSMo 1959 (State ex rel. Clay Co. v. Hackmann, 195 S.W. 706, 709, Kroeger v. St. Louis County, 218 S.W.2d 118, 120).

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However, we find no authority for expenditure of county funds on "city streets," not part of the county highway system. We have held that a county court cannot establish a city street not part of a county road system. See enclosed Opinion of the Attorney General, No. 253, dated September 22, 1965, addressed to Honorable James G. Lauderdale.

Nor have we found any statutory authority for the county court to "donate" monies to a city within its boundaries for the repair of such streets of the city not part of a continuous road system.

We conclude the term "lawful purpose" as used in Section 50.680, RSMo Supp. 1965, means as authorized by the Constitution of Missouri and by statutes and unless some authority for the expenditure of funds can be found, such expenditure on city streets would not be for a lawful purpose.

Inasmuch as you state in your letter that the court is familiar with the provisions of Section 137.555 through 137.557, RSMo Supp. 1965, and that you inquire only as to additional methods by which money of the county can be granted to the city, we will not discuss these statutes.

We have used the term "county road system." By that term, we mean all county roads and such streets, roads or alleys of any city, town or village, which are properly designated county roads and shall form a part of a continuous road or highway of said county leading into or through such city, town or village.

We note, in passing, that there may be circumstances in which, under the statutes, a county has an obligation to a city, town or village, for paving, guttering, sidewalks, etc., as may be spelled out by a particular statute. Thus, a county may be obligated to a city or town organized under a special charter pursuant to Section 88.790, RSMo 1959, for the county's proportionate share of such costs of paving, macadamizing, curbing, guttering, sidewalks, etc. Similarly, a county would be obligated to a third class city under Section 88.510, RSMo 1959, for such public works. A county would be obligated to a fourth class city under Section 88.743, RSMo 1959. In the same fashion, see Section 88.333, RSMo 1959, as to first class cities; Section 88.657, RSMo 1959, as to "third class and certain special charter cities;" Section 88.900, RSMo 1959, as to cities of 30,000 or less; and Section 88.420, RSMo 1959, as to cities of the second class.

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CONCLUSION

It is the opinion of this office that:

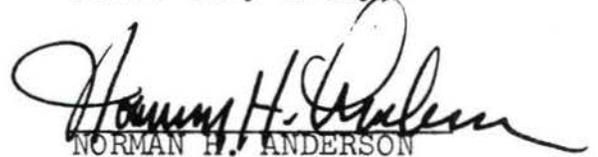
1. The County Court of Platte County may lawfully expend county monies derived from the general revenue tax on city streets where such city streets form a part of a continuous county road system.

2. A county court may not donate county monies to a city for repair of its streets where such streets do not form a part of a continuous road system.

3. A county may become legally obligated for its proportionate share of the costs of specified improvements adjacent to county property as provided by statute where a city paves or improves streets, sidewalks, etc.

The foregoing amended opinion, which I hereby approve, was prepared by my assistant Richard C. Ashby.

Yours very truly,



NORMAN H. ANDERSON  
Attorney General

Enclosure: Opinion No. 253,  
9-22-65, James G.  
Lauderdale.