

ROADS & BRIDGES:

SPECIAL ROAD DISTRICTS:

1. The commissioners of a special road district organized under the provisions of Section 233.170, RSMo

1959, and located within a fourth class county do not have the authority to make street improvements within an incorporated city of the fourth class.

2. A county court in a fourth class county is authorized to expend money derived from the special road and bridge tax levy under Section 137.555, RSMo 1959, or from the general revenue tax where such is available on the repair and upkeep of city streets in a fourth class city located within a special road district where such city streets form a part of a continuous county road system, but it cannot spend money on a bridge located within a special road district, whether said bridge lies within or without city limits.

OPINION NO. 309

August 28, 1969

Honorable Ralph B. Nevins
Prosecuting Attorney
Hickory County Court House
Hermitage, Missouri



Dear Mr. Nevins:

This is in response to your request for an official opinion from this office with respect to the following questions:

1. Do the commissioners of a special road district organized under the provisions of Section 233.170, RSMo 1959, have the authority to make street improvements within an incorporated city of the fourth class?
2. Is a county court in a fourth class county authorized to expend money or make repairs on streets located in a fourth class city which is within the limits of a special road district organized under Section 233.170, RSMo 1959?

With respect to your first question, it is our opinion that the commissioners of a special road district organized under the provisions of Section 233.170, RSMo 1959, and located within a county of the fourth class do not have the authority to make street

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improvements in a fourth class city within the district. No specific statutory authority exists for the expenditure of funds by a road district organized under Section 233.170 for the improvement of city streets with the exception of Section 233.195, subsection 2, RSMo Supp. 1967, which allows a road district in a county of the second or third class containing all or part of a city having a population of three hundred fifty thousand or more to expend funds collected from the County Special Road and Bridge Tax within any incorporated city, town, or village located within the district. Also, it should be noted that the legislature has provided for special city or town road districts organized under Section 233.010, RSMo 1959, which do have specific statutory authority to expend district funds on municipal streets. See Section 233.095, RSMo 1959. Therefore, it is our opinion that the legislature did not intend for a special road district organized under Section 233.170 and located within a fourth class county to expend money on the improvement of city streets within the district.

With respect to your second question, it is our opinion that the county court can expend money on streets located in a fourth class city within a road district organized under Section 233.170 under certain circumstances. Specifically, we point to Section 137.555, RSMo 1959, which provides:

"In addition to other levies authorized by law, the county court in counties not adopting an alternative form of government and the proper administrative body in counties adopting an alternative form of government, in their discretion may levy an additional tax, not exceeding thirty-five cents on each hundred dollars assessed valuation, all of such tax to be collected and turned into the county treasury, where it shall be known and designated as 'The Special Road and Bridge Fund' to be used for road and bridge purposes and for no other purpose whatever; provided, however, that all that part or portion of said tax which shall arise from and be collected and paid upon any property lying and being within any special road district shall be paid into the county treasury and four-fifths of such part or portion of said tax so arising from and collected and paid upon any property lying and being within any such special road district shall be placed to the credit of such special road district from which it arose and shall be paid out to such special road district upon warrants of

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the county court, in favor of the commissioners or treasurer of the district as the case may be; provided further, that the part of said special road and bridge tax arising from and paid upon property not situated in any special road district and the one-fifth part retained in the county treasury may, in the discretion of the county court, be used in improving or repairing any street in any incorporated city or village in the county, if said street shall form a part of a continuous highway of said county leading through such city or village."

Also, enclosed is a copy of Amended Opinion No. 131, issued May 26, 1966, to the Honorable Don Witt, which further enumerates an instance in which a fourth class county court can expend moneys on city streets. It is our feeling that the reasoning of this opinion is still correct even though Section 50.680, RSMo Supp. 1965, which created classes of expenditures in fourth class counties was repealed by subsequent legislation. Expenditures in fourth class counties are now governed by the provisions of Section 50.550, RSMo 1959. (See, Section 50.540, RSMo Supp. 1967, which makes Section 50.550 applicable) Therefore, it is necessary to point out that Section 50.550 does contain a restriction with regard to the repair and upkeep of bridges. Specifically, this section provides that:

" . . . The budget shall contain adequate provisions for the expenditures necessary . . . for the repair and upkeep of bridges other than on state highways and not in any special road district, . . ." (emphasis added)

Thus, a county cannot spend money on the repair and upkeep of bridges where said bridges are located in a special road district even though the bridges are located within city limits and, therefore, not subject to repair and upkeep by the commissioners of a special road district organized under the provisions of Section 233.170.

CONCLUSION

Therefore, it is the opinion of this office that:

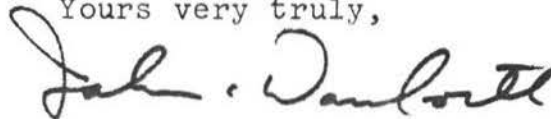
1. The commissioners of a special road district organized under the provisions of Section 233.170, RSMo 1959, and located within a fourth class county do not have the authority to make street improvements within an incorporated city of the fourth class.
2. A county court in a fourth class county is authorized to expend money derived from the special road and bridge tax levy

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under Section 137.555, RSMo 1959, or from the general revenue tax where such is available on the repair and upkeep of city streets in a fourth class city located within a special road district where such city streets form a part of a continuous county road system, but it cannot spend money on a bridge located within a special road district, whether said bridge lies within or without city limits.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard L. Wieler.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 131,
5-26-66, Witt