

COUNTIES:
COUNTY COURT:
COUNTY FUNDS:
ROADS AND BRIDGES:

County road and bridge funds cannot be transferred to the general revenue fund of the county and then used to pay the salary of the different county officials and employees for any services rendered by them.

OPINION NO. 260

October 6, 1970

Honorable Jack E. Gant
State Senator
District No. 16
9517 East 29th Street
Independence, Missouri



Dear Senator Gant:

This is in response to your request for an opinion on the following question:

The county court of Jackson County has made it a practice to charge the special road and bridge fund for certain county services performed in conjunction with the administration of that fund. The cost of these services can be loosely termed "administrative expenses." Does the county court have the authority to make such a charge against the special road and bridge fund, and transfer the costs of administrative services from the special road and bridge fund to the county general fund?

The factual situation upon which the opinion request is based is as follows. The administrative assistant to the Jackson County Court conducted a study to determine the cost of the production of services to the various county funds (park fund, health fund, special road and bridge fund). From that study, the Jackson County Court instituted the practice of charging each of the funds for the amount of county services provided to the funds. The services rendered each of the various funds of Jackson County, other than the general fund, consisted of payroll preparation; the collection, distribution, investment and management of services involved in the employees' pension plan; maintenance of personnel records; provisions for hearing of employee grievances; labor negotiations; personnel investigations; preparation of construction and purchase contracts; planning of programs for future implementation; provi-

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sions for health insurance benefits; credit union deductions and payouts; general administrative and legal counseling; emergency purchasing; computer programming and printouts; internal communications; legal opinions and preparation of orders evidencing court action; representation in litigation; audit and inventory services; transfer of appropriations within funds; and other miscellaneous services that are necessary for the implementation of any county program. (Memorandum to this office from Mr. J. T. Reid, County Counselor of Jackson County, April 6, 1970). For the purposes of this opinion, these services will be termed "administrative services," and their cost will be termed "administrative expenses." The Jackson County Court concluded from their studies that each of the special funds of the county used a portion of administrative services in direct relation to the size of the particular fund in question. The county court then instituted the practice of "charging" each fund a certain percentage of the amount in that fund for the above stated administrative services. It is assumed by this office that this charge was instituted by transferring the administrative expenses from the special fund to the general fund and issuing county warrants on the general fund to pay the expenses described. The effect of this assumption is best illustrated by an example. Assume that a secretary employed by the Jackson County Court spends fifty percent of her time working on matters concerning the special road and bridge fund, and fifty percent of her time working on other county matters. It is assumed that the secretary would be paid by a single warrant issued on the general fund of the county, and an amount equal to fifty percent of the secretary's salary would be transferred from the special road and bridge fund to the general fund. This is contrasted to the situation where the secretary would receive two warrants, one drawn upon the general fund and one drawn upon the special road and bridge fund, each warrant constituting fifty percent of the secretary's salary. However, the latter situation, solely with the respect of the use of special road and bridge funds, will also be considered in this opinion.

Section 1, Article X of the Missouri Constitution gives local governments, including counties, the authority to levy taxes for county purposes. Section 11(a) of Article X gives counties the power to levy taxes on property. Section 11(b), Article X of the Missouri Constitution limits the rates of taxation that counties may impose upon property within the county's taxing power. The aforementioned limit is thirty-five cents on the hundred dollars assessed valuation in counties having three hundred million dollars or more assessed valuation, and fifty cents per hundred dollars assessed valuation in all other counties. However, in addition to this limit on county property taxes, Section 12(a) of Article X authorizes counties to levy an additional tax, not exceeding thirty-

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five cents on each one hundred dollars assessed valuation, "to be used for road and bridge purposes." Pursuant to the aforementioned constitutional authority, the General Assembly enacted Section 137.555, RSMo 1969, which provides in pertinent part:

"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 one 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; . . ." (Emphasis added)

Section 137.560, RSMo 1969, declares that the funds provided for in Section 137.555 shall be shown as a separate item on all the financial, budget and other accounting statements of the county, and the funds shall be specifically and expressly shown on all such statements as the "Special Road and Bridge Fund" of the county. Section 50.550, RSMo, emphasizes that the annual budgets of all class one counties (Jackson County) show that all receipts from the special tax levy for roads and bridges are being kept in the special fund created for that purpose. All of the aforementioned statutes evidence a clear intent on the part of the legislature to keep receipts from the special road and bridge tax completely separate from all other county funds, and also to allow those funds to be used solely for road and bridge purposes.

Section 137.065, RSMo 1969, authorizes the county court to levy taxes for county purposes as provided in Article X, Section 11(b), Constitution of Missouri, 1945.

Our opinion is restricted to the use of road and bridge funds to pay administrative expenses to public offices in connection therewith, on the theory that these services come within the official duties of the county clerk or county court or other public officials.

Two questions arise concerning the expenditure of funds that can be used only for road and bridge purposes. First, what expenditures can be legally considered as being used for road and bridge purposes. Second, assuming that such expenditures are for

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road and bridge purposes are they, under the facts, illegal expenditures for another reason.

We believe from the information submitted that most if not all of the administrative services referred to are to be performed by the county clerk or other public officials. Likewise, our opinion is restricted to the question of the county clerk or other public official receiving compensation from the road and bridge fund for services performed by his office in connection therewith.

In State ex rel. Linn County v. Adams, 172 Mo. 1 (1903), the county clerk kept from the fees he collected fees for his services as clerk of the county board of equalization. The court held he was entitled to the per diem of three dollars per day as a member of the board of equalization but was not entitled to the fees he retained for acting as secretary of the board because those were his duties as county clerk. The court stated, l.c. 7-8:

"In order to maintain this proposition some statute must be pointed out which expressly or by necessary implication provides such compensation for such officer. For it is well settled law, that a right to compensation for the discharge of official duties, is purely a creature of statute, and that the statute which is claimed to confer such right must be strictly construed. [Jackson County v. Stone, 168 Mo. 577; State ex rel. v. Wallbridge, 153 Mo. 194; State ex rel. v. Brown, 146 Mo. 401; State ex rel. Wofford, 116 Mo. 220; Givens v. Daviess Co., 107 Mo. 603; Gammon v. Lafayette Co., 76 Mo. 675.]

"A mere application of these principles to the statute determines the question in hand. No provision is therein to be found giving any compensation to the secretary of the board of equalization. The county clerk is by the statute made ex officio a member of the board, and its secretary, but no clerical duties are imposed upon him, and no provision made for compensation for any clerical duties to be performed by him. As a member of the board he is allowed \$3 per day while acting as such member, and no longer, and so the circuit court correctly ruled and allowed him \$12, or three dollars per day as a member of the board for the whole time he could have acted as such member.

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"The clerical duties required to be performed in connection with the action of the board, for which Adams also received pay from the county in addition to said sum of twelve dollars, were imposed upon him not as a member of the board, nor as secretary thereof, but as county clerk. And in the act imposing those duties no provision is made for compensation for his services in performing them, and but for the provisions of section 3239, allowing fees for such services to him as county clerk, he would have no right to any compensation whatever therefor. He can point to said section 3239 as authorizing the compensation to him as county clerk for the clerical services for which he charged the county; but he can point to no statute authorizing such compensation to him as secretary of the board of equalization. Hence, the circuit court correctly held that he was entitled to such compensation as county clerk, and not as secretary of the board of equalization. The contention of the defendant receives no support from the case of State ex rel. McGrath v. Walker, 97 Mo. 162, to which we are cited. In that case there was a statute expressly providing a per diem compensation for the members of the state board of equalization (R.S. 1879, sec. 6669), and the only question was whether the Secretary of State, in view of the constitutional provision as to the salary of such officer, was entitled to such per diem compensation."

In *Nodaway County v. Kidder*, 129 S.W.2d 857 (1939) suit was brought to recover from the presiding judge of the county court money he received as compensation and expenses in addition to his salary. He contended he was paid as an employee of the county for inspecting roads, bridges, and other work. In discussing this matter the court stated, l.c. 860:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the

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officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S.W. 638; King v. Riverland Levee Dist., 218 Mo.App. 490, 493, 279 S.W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo.App. 650, 656.

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S.W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S.W. 655; Williams v. Chariton County, 85 Mo. 645.

"The duties performed by appellant, and for which the additional fee or salary and mileage was paid, were with reference to matters pertaining to and relating to his official duties as presiding judge of the county court and said services were within the scope of said official duties. The work in which appellant was engaged was directly under the supervision of the county court. Public policy requires that a public officer be denied additional compensation for performing official duties.

"It has been held that employment as city attorney, for which a salary was paid, includes services rendered in connection with a special tax matter, and that compensation as city attorney covers such service, and that a city collector may not contract with such city attorney for additional compensation for services in such matters. Edwards v. City of Kirkwood, 162 Mo. App. 576, 579, 142 S.W. 1109."

Under Section 51.120, RSMo, the county clerk is the clerk of the county court. It is his duty to keep an accurate record of the orders, rules and proceedings of the county court and an accurate account of all moneys coming into his hands on account of fees, costs or otherwise, and pay the same to the persons entitled thereto. Under Section 51.150, RSMo, it is his duty to keep just accounts between the county and all persons chargeable with moneys payable into the county treasury, or of persons that may become entitled to receive moneys therefrom, and to file and preserve in his office all accounts, vouchers, and other papers pertaining to the settlement of any account to which the county is a party, and to issue warrants on the treasury for all money orders paid by the county court and keep an abstract thereof.

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Section 50.330, RSMo 1969, provides that any salary provided for county officers, deputies and assistants shall be paid monthly by warrants drawn on the county treasury.

Section 51.280, RSMo 1969, provides the county clerk of Jackson County shall receive "as compensation for all services performed by him an annual salary of six thousand seven hundred dollars." It also provides an additional salary for duties imposed by this statute in issuance of all county licenses and collecting the fees for the same an additional sum of five thousand dollars to be paid as other county salaries are paid. Section 51.430, RSMo 1969, provides for the appointment of deputies, clerks, etc., and provides for their salaries.

Under Chapter 229, RSMo 1969, when any public money is to be expended on public roads or bridges, the county court, township board or road commissioner, as the case may be, has full authority to construct, maintain, purchase machinery, necessary materials and employ the necessary help.

Certainly, it is the duty of the county court by statute to have accurate and adequate records of their proceedings dealing with the county roads and it is the duty of the county clerk to keep all the necessary records. We are unable to find any statute that authorizes the county clerk to receive any additional compensation for such services or any statute authorizing the county road and bridge fund to be used to compensate him or any other public officer for any services rendered by them for the county court in the performance of their duties in connection with the county roads including all necessary records to be kept by the county court.

As heretofore stated, it appears most of the services mentioned herein are services that the public officials of Jackson County are under legal obligation to perform under their official duties of their office and for which they are compensated by their salary which is paid from the general revenue of the county. Without passing on each of the itemized services mentioned in this opinion, it is our view that no public official can be compensated from the road and bridge fund for performing a service or duty he is under legal obligation to perform by virtue of his office; such as auditing by the county auditor, legal advice and representation by the county counselor, and similar *supra* services by other public officials. *Linn County v. Adams, supra.*

It is our view, for example, that the county counselor is required to do all the legal work for the county, whether it involves road and bridge matters or other matters, for which he is compensated from the general revenue of the county. His salary is to

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be paid from the general county revenue, and there is no statutory provision for it to be paid from any other fund. The same is true regarding the county highway engineer and other public officials so far as their compensation is concerned. To permit county road and bridge funds to be transferred to the general revenue fund of the county and then used to pay the salary of the different county officials would be an indirect method of evading the express provisions of the law. The compensation due a public official has to be paid as directed by statute and in no other manner.

CONCLUSION

It is the opinion of this office that county road and bridge funds cannot be transferred to the general revenue fund of the county and then used to pay the salary of the different county officials and employees for any services rendered by them.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large initial "J".

JOHN C. DANFORTH
Attorney General