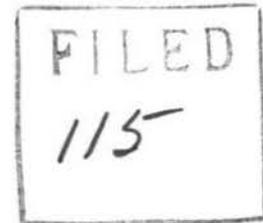


March 27, 1972

OPINION LETTER NO. 115
Answer by letter-Klaffenbach



Honorable Thomas D. Graham
Representative, District 122
Room 317, Capitol Building
Jefferson City, Missouri 65101

Dear Representative Graham:

This letter is in response to your opinion request in which you state:

"The County Court of Cole County has been petitioned under the provisions of Section 233.160, RSMo, to dissolve the Jefferson City Special Road District No. 1 of Cole County. The County Court wishes to enter into a contract to provide mutual services with the City of Jefferson should the District be dissolved, said contract to provide that not less than 25% of the County Bridge and Road Tax monies collected from within the City of Jefferson will be paid over to the City of Jefferson for street and bridge purposes. It is anticipated a contract will be entered into between the County Court and the City whereby, in consideration of the said 25%, the City will agree to provide certain mutually agreeable services to the County (See Section 137.555, RSMo, and Chapter 70, RSMo, i.e., 70.210 and 70.220).

"An objection has been raised that the County Court is without legal authority to enter into a contract with the City of Jefferson obligating bridge and road funds. May the County Court do so?"

Honorable Thomas D. Graham

You also ask:

". . . if you find that the County Court cannot use county road and bridge tax monies, in your opinion, would it be possible, under Chapter 70, RSMo, to enter into contracts with the City to provide mutual services between the county and city relating to road building and engineering, using funds other than road and bridge tax monies, as set forth in said chapter."

In our view both of your questions are answered by the enclosed opinions which are self-explanatory. It is clear that road and bridge funds of Cole County must be used as prescribed by Section 137.555, RSMo 1969, 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 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; 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 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

Honorable Thomas D. Graham

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." (Emphasis added)

The underscored provisions emphasize the express restrictions placed upon the use of such road and bridge funds in implementation of Section 12(a) of Article X of the Missouri Constitution.

It is therefore our view that Cole County has no authority to turn road and bridge funds over to the City of Jefferson for the city's use. Such funds can only be used by the county court in improving or repairing streets in cities in the county which form a part of a continuous highway of the county leading through the city as provided in Section 137.555.

We further note that it is well settled that unauthorized payments of public moneys by an official, particularly when made in direct violation of positive law, may be recovered. Kansas City v. Halvorson, 177 S.W.2d 495 (Mo. 1944); State v. Powell, 221 S.W. 2d 508 (Mo. 1949).

In answer to your second question concerning the provisions of Chapter 70, RSMo 1969, respecting cooperative agreements and the use of "funds other than road and bridge tax monies," we presume you refer to county general revenue funds. While cities and counties may contract for certain purposes under Sections 70.210, RSMo 1969 et seq., when the subject and scope of such contracts are within the scope of the powers of such municipalities and counties, we do not have the precise proposed provisions before us and therefore do not attempt to pass upon the legality of such provisions. However, the enclosed opinions which construe the cooperative agreement provisions may be utilized as a guide in determining the propriety of any action to be taken.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 169
6-7-71, Gant

Op. No. 270
5-19-71, Martin

Op. No. 260
10-6-70, Gant

Honorable Thomas D. Graham

Op. No. 296
8-21-70, Brandom

Op. No. 475
10-20-70, Rea

Op. No. 504
12-16-70, Young

Op. No. 530
12-10-70, McKenzie

Op. No. 193
6-12-69, Moore

Op. No. 308
8-22-69, Holman

Op. No. 237
11-14-68, Parker

Op. No. 230
3-29-66, Holman

Op. No. 213
5-15-63, Cantrell

Op. No. 53
9-15-50, Lewis