

SPECIAL ROAD DISTRICTS: May contribute to construction of road within 15 miles of the district limits regardless of county lines. County courts may not contribute to construction of roads outside of its own limits.

August 25, 1942.

Honorable Phil H. Cook
Prosecuting Attorney
Lafayette County
Lexington, Missouri



Dear Sir:

The Attorney-General wishes to acknowledge receipt of your letter of August 20th in which you request an opinion from this Department. Your letter, omitting caption and signature, is as follows:

"Will you please give me an opinion on the following statement of facts.

"The County Court of Lafayette County and a special road district organized under the provisions of Article 10 of Chapter 46 of the 1939 Revised Statutes of Missouri, desire to make contributions for graveling three miles of road located in Johnson County, Missouri, which is an adjoining county. The said three miles of road is a prolongation of an improved highway in the said special road district, but the said three miles of road is outside the said special road district and outside of Lafayette County. Does either the special road district or the County Court of Lafayette County have the right to make contributions for graveling of such a road?"

There are two questions to be considered under your inquiry. First, does Lafayette County have the right to contribute to the improvement contemplated under your letter? Second, does the special road district have such right?

Answering your first problem we will cite you to Article VI, Section 36 of the Constitution of Missouri, which reads as follows:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

As can be seen from reading the above provision the county court "shall have jurisdiction to transact all county and such other business as may be prescribed by law." This undoubtedly means that the county court may transact such business of the county as the statutes of Missouri give it the right to do. In view of this provision we will call to your attention the maxim of law which says, "express inclusion is implied exclusion." In other words, unless the right to contribute to the improvement of a road in another county is given to the county court of Lafayette County by statute, even though such improvement is to be made on a road which is a prolongation of a road in Lafayette County, said county court cannot contribute to the improvement of such road. Consequently, we have searched the statutes for a provision which will give a county court the right so to do, but we are unable to locate any such provision.

Therefore, it is the opinion of this department that the county court of Lafayette County, not having such inherent power, cannot contribute in any manner to the improvement of a road in an adjoining county.

In answering your second question, relative to the special road district, we will cite you Section 3685, R. S. Mo. 1939, which prescribes as follows:

"Said boards may repair, grade, gravel, macadamize, pave or otherwise improve

to the distance of 15 miles from any line of such special road district any highway outside of such district if the same be a prolongation of an improved street or highway in said district and if liberal contributions toward such improvements be made in money, material or labor by the inhabitants interested in such improvements or the county court or any special road district organized under the laws of this state, or the state highway board, or the United States government, or by any one or more of the foregoing. Or in lieu of doing such work in the improvement of such roads such boards may, under the same conditions as would authorize them to do such construction work under this section, contribute toward the repair, grading, graveling, macadamizing, paving or otherwise improving any such highway such an amount as the said board of commissioners may determine, providing the other contributions from any one or more of the sources herein mentioned are liberal contributions toward such improvements and together with the contribution of such board will be sufficient to make and complete such improvement; and provided, also, that such work shall be done under plans and specifications and estimate of cost prepared by some competent engineer and approved by such board of commissioners and such contribution of such board shall be paid from time to time only as the work is done or the improvement constructed in compliance with said plans and specifications and on certificate of some competent engineer designated by such board of commissioners and the payments on the work completed shall be in the same proportion as the total contribution of said board bears to the estimated cost of the entire job, and said certificate of the engineer shall show the work completed and the proportional amount of contribution to be paid thereon."

This provision seems to be plain and unambiguous. As can be seen, a special road district may contribute to the improvement of a road up to fifteen miles from the district lines where, "liberal contributions toward such improvements be made in money, material or labor by the inhabitants interested in such improvements or the county court or any special road district organized under the laws of this state, or the state highway board, or the United States government, or by any one or more of the foregoing." This statute not only provides that contributions may be made by the special road districts but further contains the provision that such district may do the actual work itself provided contributions are made by some of the other agencies mentioned in the aforesaid Section 8685.

In speaking of contributions, the aforesaid statute refers to those made by "the county court." We think that when the Legislature passed this provision that they had in mind the fact that one county court could not contribute to the improvement of a road in an adjoining county. Therefore, in speaking of "the county court," it is our opinion that it refers to the county court of the county wherein the improvement is to take place. Following this line of reasoning, if the County Court of Johnson County makes "liberal" contribution to the improvement, the special road district has the right under this statute to either contribute to such undertaking or to make the actual improvements itself. In other words, as far as the county lines are concerned, we do not think that they have any effect on such special road district. With respect to our present question, our stand is further strengthened by the fact that this statute permits this course of action if liberal contributions are made by any other "special road districts organized under the laws of this State." It will be noticed that this does not say that such road district must be in the same county.

This section also contains a proviso that such improvements shall be made in a certain manner, with respect to plans and specifications. However, for the purposes of your query, we will presume that such requirements have been met.

Conclusion

Therefore, it is the opinion of this department that (1) the County Court of Lafayette County cannot contribute in money, material or labor to improvements on roads in Johnson County, where such roads are a prolongation of roads in Lafayette County; (2) also that Section 8685, R. S. Mo. 1939, empowers special road districts in this State to improve or contribute to the improvements of roads not more than fifteen miles from the limits of such road districts, where liberal contributions have been made by other agencies mentioned in such provision, notwithstanding the fact that such contemplated improvements are not situate in the same county as such special road district.

Respectfully submitted,

JOHN S. PHILLIPS
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APPROVED:

ROY MCKITTRICK
Attorney-General

JSP:EG