

ROADS AND BRIDGES: PURCHASING MACHINERY: Commissioners of special road districts may purchase road machinery with bond funds issued for the purpose of constructing, repairing and maintaining bridges and roads.

February 6, 1942

2-16

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20

Hon. L. Cunningham, Jr.
Prosecuting Attorney
Camdenton, Missouri

Dear Mr. Cunningham:

This is in reply to your letter of recent date wherein you request an opinion from this department on the question of whether or not the commissioners of a special road district, organized under the provisions of Article 11, Chapter 46, R. S. Mo. 1939, may purchase road machinery with bond funds which have been voted for the purpose of constructing, repairing and maintaining bridges and culverts, and working, repairing, maintaining and dragging public roads in such district.

The commissioners of the special road district of the class to which you refer in your letter, by virtue of the provisions of Section 8717 of Article 11, R. S. Mo. 1939, may issue bonds. This section directs the purposes for which the proceeds from the sale of such bonds may be used in the following language:

"* * * * The proceeds of the sale of such bonds shall be used for the purpose only of paying the cost of holding such election, and constructing, repairing and maintaining bridges and culverts within the district, and working repairing, maintaining and dragging public roads within the district."

Since this section does not expressly provide for the expenditure of such funds for the purpose of purchasing road machinery, the authorization for such an expenditure must be obtained by implication, unless we also find some statutory authority. Section 8714 of this same article specifically grants to the commissioners of such road districts certain powers and duties in the following language:

" * * * * *
 Said commissioners shall have sole, exclusive and entire control and jurisdiction over all public highways, bridges and culverts within the district, to construct, improve and repair such highways, bridges and culverts, and shall have all the power, rights and authority conferred by law upon road overseers, and shall at all times keep such roads, bridges and culverts in as good condition as the means at their command will permit, and for such purpose may employ hands and teams, implements, tools and machinery; all kinds of motor power, and all things needed to carry on such work; * * * * *

This section expressly grants to the commissioners the power to purchase road machinery. In construing this section in the case of Hawkins v. Cox, 66 S. W. (2d) 539, l. c. 542, the court said:

"This road district is given authority under section 8065, R. S. 1929 (Mo. St. Ann. Sec. 8065, p. 6357,) to construct, improve, and repair highways and bridges and is enjoined to keep same in good condition, and to this end is authorized to 'employ hands and teams' and to 'rent, lease or buy teams, implements, tools and machinery; all kinds of motor power, and all things needed to carry on such work.'"

All of the duties and powers imposed and granted in the foregoing section could be implied from the express duty imposed on the commissioners to repair and maintain the roads and bridges in the district.

In the case of King v. Maries Co., 297 Mo. 488, the Supreme Court in treating the question of implied powers granted by express powers, said: (l. c. 496)

"It has been uniformly held that county courts are not the general agents of the counties, or of the State. Their powers

are limited and defined by law. They have only such authority as is expressly granted them by statute. (Butler v. Sullivan County, 108 Mo. 630; Sturgeon v. Hampton, 88 Mo. 203; Bayless v. Gibbs, 251 Mo. 492; Steines v. Franklin County, 48 Mo. 167.) This is qualified by the rule that the express grant of power carries with it such implied powers as are necessary to carry out or make effectual the purposes of the authority expressly granted."

And in the case of Bybee v. Hackman, 276 Mo. 111, this rule was again announced as follows (l. c. 116):

" * * * * * But it is also well settled, if not fundamental law, that whenever a duty or power is conferred by statute upon a public officer, all necessary authority to make such powers fully efficacious, or to render the performance of such duties, effectual, is conferred by implication. * * * * *"

Applying this rule in the Bybee case, supra, the Court held that the State Board of Equalization had implied authority to employ a stenographer at the expense of the state to take evidence at its hearings.

Also, in the case of Walker v. Linn County, 72 Mo. 650, the court held that a county court has implied authority to insure county buildings under "its express duty to manage and control county property, and take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage."

CONCLUSION

From the foregoing, we are of the opinion that the commissioners of a special road district in the class to which you refer, have both the express and implied power to vote bonds and use the proceeds thereof for the purpose of purchasing necessary road machinery to be used in constructing, maintaining bridges and culverts within their districts

Hon. L. Cunningham, Jr.

-4-

February 6, 1942

and for working, repairing, maintaining and dragging such roads.

Respectfully submitted,

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APPROVED:

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