

RELATING TO AUTHORITY OF COUNTY COURTS TO MAKE APPROPRIATION FOR REPAIR OF BRIDGES IN SPECIAL ROAD DISTRICTS:

April 27th, 1934

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Mr. Lewis B. Hoff
Prosecuting Attorney
Cedar County
Stockton, Missouri

Dear Sir:

We acknowledge receipt of your letter under date of April 16th, 1934 in which you state and inquire as follows:

"The opinion of your department is requested on the following question:

May the County Court, under the county budget law, use the funds of Class 3 for the purpose of repairing a bridge in a special road district where the cost of such repairs will exceed fifty dollars (\$50.00) ?

You will note that Section 7900 R.S. No. 1929 provides that repairs necessary at one time costing more than \$50 shall not be required to be done by the road district.

The specific case at hand is a large bridge in a special road district. The repairs on the floor of the bridge will require a large lumber bill.

I would appreciate an opinion at your earliest convenience."

I.

County courts may not appropriate funds out of Class 3 of the county budget for repairing bridges in special road districts.

We are not advised by your letter whether the special road district referred to is organized under Chapter 42 Article 9, or under said chapter and Article 10. If under Article 9 of said chapter, we are referred to section 8039 R.S. 1929 which reads as follows:

"BOARD MAY BUILD BRIDGES.-- Said board may, by contract or otherwise, under such regulations as the board shall prescribe, build, repair

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and maintain, or cause to be built, repaired, or maintained all bridges and culverts needed within said district: PROVIDED, HOWEVER, that the county court of the county in which said special road district is located may, in its discretion, out of the funds available to it for that purpose, construct, maintain, or repair, any bridge, or bridges, or culvert or culverts in such road district, or districts, or it may, in its discretion, appropriate out of the funds available for that purpose money to aid and assist the commissioners of said special road district, or districts, which shall be expended by the commissioners of said special road district, or districts, as above provided."

If under chapter 10 of said chapter, we are referred to Section 8065 M.S. 1929, and said section in part reads as follows:

TOOLS, MACHINERY, ETC., TO BE DELIVERED TO COMMISSIONERS--THEIR POWERS AND DUTIES.--
.....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 at such compensation as they shall agree upon; rent, lease or buy teams, implements, tools and machinery; all kinds of motor power, and all things needed to carry on such work: PROVIDED, that said commissioners may have such road work, or bridge or culvert work, or any part thereof, done by contract, under such regulations as said commissioners may prescribe."

In consideration of section 8039 Supra, we find that it is purely optional with the county to give assistance to special road districts to repair bridges, if there are any funds available for that purpose.

Under Section 2, Laws 1933, page 341, we find the provisions of the county budget law and class 3 thereof reads as follows:

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"Class 3: The county court shall next set aside and appropriate the amount required, if any, for the upkeep, repair or replacement of bridges on other than state highways (and not in any special road district) which shall constitute the third obligation of the county."

From the above it appears that the county is not vested with any authority to make appropriations for upkeep, repair or replacement of bridges in special road districts.

II.

Commissioners in special road districts organized under Article 10 of Chapter 42 have exclusive control in repairing bridges in their districts.

Under Section 8065 Supra. it is provided that the commission shall have the exclusive control over all bridges in their district, and to improve or repair same, and shall at all times keep all bridges in as good condition as the means at hand will permit.

From the express statutory provision as cited above, it is the opinion of this department that the county court may not appropriate any funds out of class 3 of the county budget law to repair bridges in special road districts in their respective counties, and further any aid given by the county court for such purpose out of any other funds available is wholly discretionary with the county court.

We trust you will find this helpful in solving your problem.

We herewith inclose a copy of the opinion given out by this department, on the manner of computing relationship under Section 13 Article XIV of the Constitution.

Very truly yours,

W. W. Barnes

Assistant Attorney General

APPROVED:

Attorney General