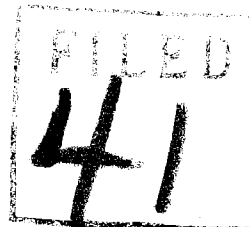


COUNTY
ROADS AND BRIDGES
MACHINERY:

County Court is not authorized to purchase road machinery to be leased to townships or special road districts, or other municipal subdivisions.

February 26, 1942

Mr. W. A. Holloway
Chief Clerk
State Auditor's Dept.
Jefferson City, Mo.



Dear Mr. Holloway:

This is in reply to your letter of recent date, wherein you submit a question which had been submitted to you by the presiding judge of the County Court of Bates County, Missouri. The question is as follows:

"The Court is contemplating the leasing of a Tractor, Rock crusher and elevator and a loader from the Hobson-McFarland Co. for a sum of something over \$12,000.00 and payable \$4,000.00 rental each year until paid. This is the problem.

"Can the Court in a Township organization county, lease a Tractor, Rock crusher, elevator and loader paying rental of \$4,000.00 each year to crush rock for bridges and when not in use to be leased to the various Townships to crush rock to build road? Is this a legitimate expenditure and if so what fund shall the same be paid from, Class #3?"

This request involves two questions:

1. The authority of the County Court to make the purchase of \$12,000.00 road machinery to be paid for on what is called a "rental plan" of \$4,000.00 each year.
2. The authority of the court to rent such machinery to the various township boards to crush rock and build roads for such townships.

As to the powers and duties of the County Courts, townships, boards and special road commissioners to construct and maintain roads and bridges, we find the following statutory provisions applicable.

Section 8595 R. S. Mo., 1939:

"Whenever any public money, whether arising from taxation or from bonds heretofore or hereafter issued, is to be expended in the construction, reconstruction or other improvement of any road, or bridge or culvert, the county court, township board or road district commissioners, as the case may be, shall have full power and authority to construct, reconstruct or otherwise improve any road, and to construct any bridge or culvert in such county or other political subdivision of the state, and to that end may contract for such work, or may purchase machinery, employ operators and purchase needed materials and employ necessary help and do such work by day labor.* * * *"

This section gives the court authority to purchase equipment and materials which it may need to perform the duties imposed thereby. It will also be noted that this same authority is granted to townships, boards and commissioners of special road districts.

Under Section 8534 the county court determines what bridges should be built and maintained at the expenses of the county. Bridges which cost over fifty dollars, under this section, are to be built by the county; after such bridges are built, then the county court may attach the same to the road district and any repair on such bridge over fifty dollars, is borne by such road district.

Section 8536 R. S. Mo., 1939. Under Section 8538 R. S. Mo., 1939; under certain circumstances the county court is required to pay one-half of the contemplated costs of bridges.

Section 8539, 8540, 8541 and 8562, contemplate the expenditures by the county for the maintenance of roads and bridges under certain circumstances. Under Section 8325 R. S. Mo., 1939, where a bridge which is located in a county, under township organization and costs over one hundred dollars, the county court may build the bridge at the expense of the county.

Article 17 of Chapter 46 R. S. Mo., 1939, pertains to road districts in counties under township organization. In referring to the article, it will be seen that the duties of the township board with respect to maintaining, repairing and constructing roads and bridges are similar to those of the county court. If the county court is authorized to purchase this machinery on a rental plan and to rent it to the township board or to any other municipal subdivision, the authority so to do, must be obtained from the statute. The rule as to the powers and duties of a county board being confined to the statute is stated in Volume 20 C. J.S. page 849 Section 82 as follows:

"It is well settled that a county board possesses and can exercise such powers, and such powers only, as are expressly conferred on it by the constitution or statutes of the state, or such powers as arise by necessary implication from those expressly granted or such as are requisite to the performance of the duties which are imposed on it by law. It must necessarily possess an authority commensurate with its public trusts and duties.* * *

For the purpose of considering whether or not the contract for the purchase of this machinery is a valid contract, we call your attention to the case of Hawkins et al. v. Cox et al. 66 S.W. (2d) 539. In that case, it was held that a special road district could not purchase road machinery costing \$2,500.00, paying \$500 cash and \$500 per year and interest thereafter, where such road district only had on hand the sum of \$600 and where the revenue for the year of the purchase of such machinery was approximately \$600. The reason for such ruling was that the commissioner of a special road district could not obligate the revenue of future years without being authorized so to do, by the voters of the district. The same rule applies here and if the county court of Butler County by the proposed contract, obligates the revenue of future years by this purchase, then under the Hawkins v. Cox case, supra, it would be void because it is in violation of Section 12, Article 10 of the Constitution of Missouri, which prohibits the incurring of an indebtedness in excess of anticipated revenue of that year without a vote of the people of the district.

This request indicates that the contract is purely a rental contract and that the revenue of future years is not

to be obligated thereby.

On the question of whether or not a debt is incurred by such a contract--we find that the Supreme Court in the case of Ebert v. Jackson County 70 S. W. (2d) 918 passed on a rental contract whereby it held that a contract extending over a period of four years to pay rent in advance on the first day of each month for the use of certain properties, created a debt within the meaning of said section 12 of Article 10 of the Constitution and was voided. If the contract for the purchase of this road machinery is an unconditional promise to pay a fixed sum at some future specified date, then under the Jackson County case supra, it creates a debt, the contract is voided and the court would not be authorized to enter into same.

On the question of the authority of the court to rent this machinery to the various townships as stated in your request--we must find such authority from the statute. The rule on the authority of the county to lease property is stated in Volume 20, C. J. S. page 1002 Section 170 as follows:

"In accordance with the general rule, stated in section 82, that county boards or county courts have no power other than those conferred, such courts or boards have no power to rent or to lease property or franchises owned by the county, unless they are expressly or impliedly authorized to do so, * * * * *."

In King v. Maries County 297 Mo. 488, 496, the court announced the rule as follows:

"It has been held uniformly 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. 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."

From a review of the statutes hereinbefore referred to and any other statute which might be pertinent thereto, we fail to find where by expression or implication, the county court has been authorized to lease road machinery to special road

districts, township boards or to any other municipal subdivision. We do not find any case in Missouri where this question has been before the court, however, we do find a Kentucky case, which is somewhat in point here. It is Jefferson County Fiscal Court et al. v. Jefferson County ex rel. Lawrence S. Grauman, County Attorney et al. 129 S. W. (2d) 554, 122 A. L. R. 1151. In that case the County Court had entered into a contract with a city of Louisville for fire protection for certain public buildings outside the city limits of Louisville. Some of these buildings belonged to the county and others belonged to other public instrumentalities. At l. c. 1155 Volume 122 A. L. R. the statement of the trial court is reported as follows:

"Examining the question whether the County possesses power to provide such protection for the properties of the independent instrumentalities, it is to be observed that the Legislature has conferred power, express and implied, upon those separate corporate entities to acquire, hold maintain and repair the properties owned by them. The independent corporate instrumentalities possess the power, and are obligated, to employ reasonable measures to safeguard their properties against fire hazards. The existence of this power in them would seem to militate against finding that the delegation of power has been duplicated by a like grant--by implication--to the County.

"It is my opinion that neither by expression nor necessary implication has the Legislature delegated power to the County to contract for fire protection services to be rendered with respect to the buildings owned and maintained by the independent governmental agencies as distinguished from those owned by the County itself."

The court in that case held that the county court did not have authority to contract for fire protection for public instrumentalities other than those under the supervision of the county court. This case also held that the county court should have confined and limited itself to the protection of county owned properties and should have refrained from incurring additional

expenses for the protection of properties of separate governmental agencies.

So, in the question here since the townships and special road districts are authorized to purchase machinery, materials and supplies for the purpose of the construction and maintenance of roads and bridges, then by following the reason announced in the Kentucky case above, the county court should be confined and limited to expenditures only to the purchase of machinery, materials and supplies for the construction and maintenance of the roads and bridges, which it is required to construct and maintain.

CONCLUSION

From the foregoing, it is the opinion of this department: First, that if by the proposed contract for the purchase of certain road machinery a debt is incurred, then the county court is not authorized to enter into such a contract without a vote of the voters of the county. Second, that the county court is not authorized to lease to the various townships, road machinery for the purpose of crushing rock to build roads in such townships.

Respectfully submitted

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Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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