

ROADS AND BRIDGES:
CONSTRUCTION OF BRIDGES
IN COUNTY COURT DRAINAGE
DISTRICTS:

When a new road is established through or into a county court drainage district, the special road district comprising such drainage district shall pay for the construction of such bridges that are made necessary on account of the road crossing one of such drainage ditches.

August 27, 1941

Mr. E. S. Huffman, Clerk
County Court of Pemiscot County
Caruthersville, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department upon the following statement of facts:

"The County Court of this county has made an order directing and authorizing me to submit to you for an opinion the following question of law:

"A new public road has been opened and established through court orders of the County Court and this road intersects and crosses a drainage ditch in one of the drainage districts organized many years ago as a county drainage district. The drainage district, of course, is controlled and its ditches maintained by the County Court, and the ditch in question was constructed many years before the present public road was opened across the ditch. The location of a proposed bridge across this ditch is in one of the special road districts of the county.

"I particularly call your attention to Section 12,427 R. S. of Mo., 1939, and request you to give me an opinion as to whose obligation it is to construct a bridge across this ditch, that is, is it the obligation of the special road district, the county, or the drainage district?"

Under Article 3 of Chapter 79, R. S. Missouri 1939, drainage districts may be constructed and improved by county courts. This is a special act and the powers and duties of the county court acting for such districts are derived solely therefrom. Under Section 12398 of said article the following provision is made:

"When it shall be conducive to the public health, convenience or public welfare, or when it will be of public utility or benefit, the county court of any county in this state shall have the authority to organize, incorporate and establish drainage districts and to cause to be constructed, straightened, widened, altered or deepened, any ditch, drain, natural stream--* * * * *

Under Section 12403 of said article such a district, after being duly formed, becomes a body corporate and a political subdivision of the state, capable of suing and liable to be sued. In such districts the county court acts as the board of commissioners for the district. Section 12427 of said article, to which you refer in your request, provides as follows:

"The county court may, when the same is necessary for the public health, convenience or welfare, cause to be constructed or enlarged any bridge or culvert made necessary by the crossing of any ditch constructed by a district organized under the provisions of this article: Provided, however, that if such bridge or culvert shall belong to any corporation other than the county, the county clerk shall give such corporation notice by delivering to its agent the order of the court declaring the necessity for constructing or enlarging such bridge or culvert. A failure to construct or enlarge such bridge or culvert within the time specified shall be taken as a refusal to do said work, and thereupon the county court shall

proceed to let the work of constructing or enlarging the same, and assess the corporation with the cost thereof, and the county clerk shall place such assessment on the tax book against said corporation, and it shall be a lien upon the property of the corporation, to be collected as taxes. But before the county court shall let such work, they shall give to the agent of such corporation at least twenty days' actual notice of the time and place of letting such work. When a bridge has been constructed across a drainage ditch that crosses any public highway in this state, that shall be adjudged sufficiently by the county court of the county in which said drainage district is organized, such bridge shall become a part of such highway and shall thereafterwards be maintained, repaired or replaced by the authority authorized by law to maintain the road of which it becomes a part."

This is the section of this article which refers to the construction of bridges in such districts. So if the burden has been placed on the district to construct a bridge under conditions as related in your request, we must find that duty in this section. The first sentence of this section provides that when the county court finds that it is necessary for the public health, convenience or welfare to construct or enlarge such a bridge, it may cause the same to be done. The bridge referred to here, however, is the one which is made necessary by the crossing of any ditch of the district which is constructed across a public road. The county court, when acting under this section, is acting as a board for the district. It might be argued that the language of this section, which reads that "The county court * * cause to be constructed or enlarged any bridge * *, would require the county to bear the expense of the bridge. Such a construction would not be in harmony with Article 10, Chapter 46, R. S. Missouri 1939, and especially Sections 8682 and 8688 of said article which are as follows:

"Sec. 8682. Said board shall have sole, exclusive and entire control and jurisdiction over all public highways with-

in its district outside the corporate limits of any city or village therein to construct, improve and repair such highways, and shall remove all obstructions from such highways, and for the discharge of these duties shall have all the power, rights and authority conferred by general statutes upon road overseers, and said board shall at all times keep the public roads under its charge in as good repair as the means at its command will permit, and for this purpose may employ hands at fixed compensation, rent, lease or buy teams, implements, tools and machinery, all kinds of motor power, and all things needful to carry on such road work: Provided, that the board may have such road work or any part of such work done by contract, under such regulations as the board may prescribe."

"Sec. 8688. Said board may, by contract or otherwise, under such regulations as the board shall prescribe, build, repair 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."

We make reference to this act because by your request you indicate that the new road is in a special road district. The proviso clause of said Section 8688 makes it discretionary

with the county court whether or not it will expend any of the available public funds on such a bridge.

Under Section 8691, R. S. Missouri 1939, all road taxes collected on lands within the bounds of a special road district must, on application of the commissioners of such district, be turned over to the commissioners of the district for road and bridge purposes in that district. This has been so ruled by the appellate courts in State ex rel. v. Barry County, 320 Mo. 280, 258 S. W. 710; State ex rel. v. Burton, 283 Mo. 44, 222 S. W. 844.

Section 12434, R. S. Missouri 1939, provides in part as follows:

"The county courts shall have power and it shall be its duty at the May term of court of each year to levy a tax upon each tract of land or other property within each district sufficient to maintain, reserve, restore, repair, strengthen and replace the drains, ditches, levees and other works of the district for whose benefits such tax is levied. Said tax shall be known as a 'maintenance tax' and shall be apportioned upon the basis of benefits assessed for the original construction and shall be limited in any one year to ten per cent of the original cost of construction. * * * * *

If the drainage districts are liable for the expense of constructing such bridge, the same would have to be paid out of the tax authorized under the foregoing section.

The last sentence in Section 12427, supra, was placed in there as an amendment by the General Assembly in 1937. Clearly, by that amendment the lawmakers have placed the burden of maintenance of such bridges on the body authorized by law to maintain the roads and bridges in that district, which in this case is a special road district under Section 8682, supra.

Referring again to said Section 12427, it appears that when the bridge is made necessary because a ditch is

dug across a highway, then the county court, acting for the district, may cause the bridge to be constructed if it finds that it is necessary for the public health, convenience or welfare. That condition does not exist in your request, because the road was not in existence when the ditch was dug and the bridge is not made necessary because of the fact that it was dug across the road but is made necessary because of the fact that the new road extends across the ditch.

We fail to find where our courts have had a question exactly like this before them, but in *State ex rel. Walker, Prosecuting Attorney, v. Locust Creek Drainage District et al.*, 67 S. W. (2d) 840, the court has made some rules which may be applicable here. In that case the court was dealing with a circuit court drainage district. However, the language of the circuit court drainage district section and of the county court drainage district section, with reference to a bridge or culvert being made necessary by the crossing of any ditch constructed by a district, is similar. In speaking of the statutory duties of the district to build bridges, in that case the court said, l. c. 847:

"* * * While by said article respondent district is empowered to construct, enlarge, and maintain bridges, or cause the same to be constructed, enlarged, or maintained where made necessary by its improvements, it nowhere imposes a requirement for a bridge to be built by it, except at a point where it has dug its ditch across the public highway, * * * * *"

As stated above, similar language is used in the county court drainage district sections which only authorize the county court to build a bridge at a point where the ditch crosses the highway. Again at l. c. 847, the court, in discussing this question, further said:

"It was not by such article intended that the district should be required to build bridges except at points where it disturbed the highway and made bridges necessary; and the bridges required by said article are based up-

on the consideration that the district having by its act disturbed the highway so that such bridges become necessary should be required to build them. * *"

In your case the highway, where the new road crosses the ditch, could not have been disturbed by the county court when this ditch was dug.

Again at l. c. 848, in said case the court said:

"No requirement having been imposed upon respondent district by the statute to build a bridge at its own expense at any other point than where its ditch intersects a public highway, no requirement can be successfully made of it to build one at some point where its ditch does not cut across the highway or at some point where the highway crosses the channel of Locust creek; * * * *"

The court, quoting from an Illinois case, stated as follows, l. c. 849:

"In the case of People ex rel. Speck v. Peeler, 290 Ill. 451, 125 N. E. 306, loc. cit. 309, the Supreme Court of Illinois said: 'While a road district may not be required to build bridges over artificial channels cut through its roadway by a drainage district, there can be no question that its duty to build bridges on the highways across water courses is continuous, even though such water courses are used by the drainage district as part of its ditches.'

"The plain inference from such language is that the drainage district, from the mere fact that it utilizes such water courses, is not required to bridge them, but such duty remains where it was in the first instance, unless otherwise required by law."

Mr. E. S. Huffman

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By these authorities we think the statute imposes on the drainage district the duty to erect a bridge only in cases where the ditch is dug across the road and as a result thereof it is made necessary for someone to build a bridge.

CONCLUSION

From the foregoing it is the opinion of this department that in cases where a new road is established in or through a special road district which contains territory in a county court drainage district, and where such road crosses one of such ditches, and where it is necessary to erect a bridge thereat, it is the duty of the special road district, in which the bridge is located, to bear the expense of such bridge, and that county court has the discretionary power to pay a part of such expense out of authorized and available public funds.

Respectfully submitted

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APPROVED:

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