

COUNTY CLERK: Not liable for donation to special road district made by county court if donation is legal, unless funds are taken from the five classes of the County Budget Act.

February 19, 1941

Mr. Emory C. Medlin  
Prosecuting Attorney  
Barry County  
Cassville, Missouri



Dear Sir:

This department is in receipt of your letter of February 13th, wherein you make the following inquiry:

"As I understand the law, the county clerk has no authority to make a donation of the county's money to special road districts.

Now, in the event that they make a donation over the protest of the county clerk and treasurer, and the money is paid out, would the county clerk and the treasurer become liable under their bond?"

Under the facts as contained in your letter, we cannot determine whether you refer to the authority of the county clerk or the county court to make a donation of the county's money to the special road district. Under Section 8688 R. S. Mo. 1939, formerly Section 8039 R. S. Mo. 1929, the county court may in its discretion, out of the funds available to it for that purpose, aid and assist the commissioners of a special road district in constructing, maintaining and repairing bridges.

Section 8685 R. S. Mo. 1939, formerly Section 8036 R. S. Mo. 1929, pertains to the provision that the county

Mr. Emory C. Medlin

-2-

February 19, 1941

court may make contribution for certain improvements. We mention the above sections merely for your consideration in determining whether the donation is legal.

In answer to the specific question as to whether or not the county clerk and treasurer would become liable under their bonds for such donation, it would be a question of whether the donation was legal. If legal, of course, they would not be liable. Another element which would enter would be the question of whether or not the money so donated came from the road and bridge or special road and bridge fund, or from the general revenue fund. It has been our construction that the road and bridge and special road and bridge funds do not come within the purview of the five classes of the County Budget Act.

Under Section 10917, Laws of 1939, Laws of 1933, page 340, the last paragraph in said section is as follows:

"Any order of the county court of any county authorizing and/or directing the issuance of any warrant contrary to any provision of this law shall be void and of no binding force or effect; and any county treasurer, or other officer, participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond."

#### CONCLUSION

We are therefore of the opinion that if the donation is paid from any of the classes of Section 10914 R. S. Mo.

Mr. Emory C. Medlin

-3-

February 19, 1941

1939, Laws of 1937, page 422, and otherwise contrary to the County Budget Act, the officers in question would be liable on their bonds under the above quoted section. It may be possible, if the donation is legal, it could be paid under Class 6 of the County Budget Act.

In any event, we are of the opinion that there is no provision in the law for the county clerk as such officer to make a donation of the county's funds to a special road district.

Respectfully submitted

OLLIVER W. NOLEN  
Assistant Attorney General

APPROVED:

---

COVELL R. HEWITT  
(Acting) Attorney General

OWN:RT