

COUNTY BUDGET LAW: County court in counties not under township organization can purchase road machinery and pay for construction and maintenance of roads out of Class 6 under certain conditions.

April 28, 1942.

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Honorable Alvin H. Juergensmeyer
Prosecuting Attorney
Warrenton, Missouri



Dear Sir:

This will acknowledge receipt of your letter which reads as follows:

"Some time ago I wrote you concerning an opinion as to whether money out of the general revenue fund could be used for maintenance of roads. On February 23d I received a letter from John E. Taylor, Assistant Attorney-General, enclosing copy of an opinion written to Leo J. Harned, Prosecuting Attorney of Pettis County, Missouri, holding that the County Court would not have authority to expend money out of Class 6 for road and bridge in special road district.

"I am inclined to concur with the opinion relating to special road districts, but under our budget law money may be expended out of Class 6 for any legal purposes.

"Our County Court has about \$10,000.00 on hand after supplying the needs of classes 1 to 5 inclusive, which was placed in Class 6. Our question is:
1. May the County Court expend money out of Class 6 for road equipment?
2. May the County Court expend money out of Class 6 for maintenance of roads?
3. May the County Court expend money out of Class 6 for construction of new roads?"

What is said in this opinion is not intended to apply to counties under township organization nor to roads in special road districts.

Section 10911 of the County Budget Law as amended at page 650, Laws of Missouri, 1941, reads in part as follows:

"Class 6. After having provided for the five classes of expenses heretofore specified, the county court may expend any balance for any lawful purpose: Provided, however, that the county court shall not incur any expense under class six unless there is actually on hand in cash funds sufficient to pay all claims provided for in preceding classes together with any expense incurred under class six; Provided, that if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under class 6."

From your letter we understand that your county court has provided for the first five classes of expenses called for by the budget law and that there is actually cash on hand sufficient to pay all claims in said five classes. That being true, the surplus in Class 6, under the foregoing provision of the budget law, may be spent for any lawful purpose. To answer your inquiry therefore we must determine whether the purposes for which your county court is contemplating expenditure of money from Class 6, are lawful purposes. In other words, is it lawful for the county court to purchase road equipment, to maintain roads and to construct new roads? We turn to the statutes for the answers.

Section 8475, R. S. Mo. 1939, provides how the expenses for establishing a new road shall be paid. It provides in part as follows:

"* * * If the court finds it necessary to establish said road at the expense of the county, or if it be found necessary to establish same

either wholly or partly at the expense of the petitioners and said petitioners pay into the county treasury, on or before a time to be fixed by the court, the probable amount of damages, ascertained as aforesaid, or a sum to be fixed by the court, to the use of the owners of said lands, then, in either event, the court shall make an order directing the county highway engineer, within sixty days thereafter, to view, mark out and survey such road, take all relinquishments of the right of way of those who will give the same, and take the names of all owners of land, through which said road may run, and who have not given or will not give the right of way, and the amount of damages claimed by each one separately, together with a description by section and subdivision thereof of the lands of each owner sought to be taken, and also the engineer's estimate of the cost of bridges, culverts and grading that may be necessary upon such road, and shall report his proceeding in the premises, together with his survey and plat of said road, to the court within the time last above provided. If it shall appear from said report that the right of way has been secured, and deeds therefor filed, or that the damages claimed do not exceed the amount offered by the court or deposited by the petitioners as aforesaid, or both, the court shall order the road established. * * * * *"

Section 8478, R. S. Mo. 1939, reads as follows:

"If none of the parties in interest file exceptions to the report of the commissioners within the time fixed by the next preceding section, the county court shall retain jurisdiction of the

cause, and at its first sitting thereafter the court shall pay the damages awarded, or if the court refuses to pay them, and the petitioners pay them, the court shall order the road established, and said order and the report of the highway engineer thereon shall be recorded by the clerk of the county court in a book to be provided and kept for that purpose."

Section 8486, R. S. Mo. 1939, gives the right of eminent domain to counties to condemn private property for public road purpose, including land, earth, stone, timber, rock quarries or gravel pits. Said section also provides a method of ascertaining and determining the amount of the compensation to be paid the property owner in the event the county court and the property owner are unable to agree on the amount of damages.

From the foregoing sections we believe it is clear that the law authorizes county courts to pay for the establishment of public roads and therefore the establishment of public roads is a lawful purpose for which county funds may be expended.

Article 3, Chapter 46, R. S. Mo. 1939, provides for the maintenance of public roads. The maintenance so provided is through road overseers who are appointed by the county court and who report to the county court as to their work. Section 8526 of said article authorizes the county court to levy a tax for a road and bridge fund, which said revenue is also by Section 8513 directed to be used by the county court "for the construction and maintenance of roads and bridges located within the confines of the county highway system herein provided for as well as all other roads and bridges in such county." Likewise, Section 8527 of said Article 3 provides a special tax, the revenue from which (outside of special road districts) is directed to be placed to the credit of the county road and bridge fund and to be used "in the construction and maintenance of roads, and may, in the discretion of the county court, be used in improving or repairing any street in any incorporated city or village in the county, if said street shall form a part of a continuous highway of said county leading through such city or village; * * *."

Article 9 of Chapter 46, R. S. Mo. 1939, sets out the duties of the county highway engineer. A reading of this article clearly shows that the county courts have the supervision over the maintenance of public roads of the county. Section 8681 of said article also clearly contemplates that the county will purchase tools, material and machinery for the maintenance of such roads. Furthermore, it is well established that where power is granted to an officer of the state to do a certain thing, by implication all authority that is necessary to make such powers effective is conferred. The rule was stated as follows in the case of State ex rel. v. Hackmann, 276 Mo., 1. 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. (Hannibal, etc., Railroad v. Marion Co., 36 Mo. 303; Walker v. Linn Co., 72 Mo. 650; Sheidley v. Lynch, 95 Mo. 487.) * * "

It must follow therefore that since the statutes authorize the county courts to construct and maintain roads, such courts have by implication authority to purchase whatever tools and machinery are necessary to construct and maintain such roads.

From all of the above we conclude that the construction and maintenance of roads and the purchase of equipment to accomplish said purposes are all lawful functions of the county court whenever there are available funds for said purposes.

Conclusion

It is, therefore, the opinion of this Department that where a county court has provided for the first five

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classes of expenses called for under the budget law and actually has on hand sufficient cash to pay all claims in said five classes, such county court may expend from Class 6 of the budget money for the purchase of road equipment and for the expenses of constructing and maintaining roads (outside of special road districts and in counties not under township organization).

Yours very truly

HARRY H. KAY
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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