

COUNTY COURTS:) County court may designate an emergency bridge
COUNTY BUDGET:) fund to Class 5 of the county budget and make
transfers to provide available funds for aid to
special road districts.

March 1, 1943.



Hon. Eldred Seneker
Prosecuting Attorney
Mt. Vernon, Missouri

Dear Sir:

The Attorney-General wishes to acknowledge receipt of your letter of February 16, 1943, in which you request an opinion of this Department. Your letter of request reads as follows:

"The county court of Lawrence County, Missouri, has asked me for an opinion as to what funds are available to assist special road districts and repair and build bridges as provided in Section 8688 and Section 8534, Revised Statutes of Missouri, 1939.

"In reading Section 10911, R. S. Mo. 1939, which gives the classification of expenditures and their order under the budget law, I find in class 3, provision for repair, upkeep and replacement of bridges but none of this fund shall be used in a special road district.

"Due to the conflict in these Sections, I am unable to give the court more than a curbstone opinion and I would not want to back that up myself.

"I find in the county clerk's office of date April 1, 1942, the following court order:

"O R D E R

"Upon the advice of the Prosecuting Attorney it is hereby ordered by the

court that \$2,000.00 of County revenue be and it now is transferred from class 5 to 6. This is done to take care of an emergency that might arise, such as a bridge wash out, and the court would have to assist the road district in rebuilding.'

"I cannot see that the law gives the court this right, however I may be wrong.

"The county has sufficient money to aid in building, maintaining and repairing roads and bridges. At the present time the county has revenue of approximately \$43,000.00 with no indebtedness, I am informed. This amount is classified under the budget as follows:

"Class 1	\$5,400.00	approximately
Class 2	5,700.00	"
Class 3	3,000.00	"
Class 4	22,000.00	"
Class 5	6,700.00	"
Class 6	245.00	

"This balance is from last December collections.

"Class 5 under Section 10914 provides for contingent and emergency expense and also provides for the transfer from other classes to 5.

"Can a county court designate an emergency road and bridge fund in this class and make any transfers to that fund to provide available funds for assisting road districts and repairing bridges etc. as provided in Sections 8688 and 8534?

"I kindly ask your opinion in this matter and any information concerning how to aid road districts, if possible, will be greatly appreciated."

The county courts of the various counties in the State of Missouri are empowered to aid special road districts in the

construction, maintenance and repair of bridges and culverts by Section 8688, R. S. Mo. 1939. This section provides as follows:

"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."

This being true the next question is, from what fund shall this aid be furnished? In order to arrive at a solution to this problem it is necessary to study the budget law of the State of Missouri as set out in Section 10911, R. S. Mo. 1939, and as amended in the Laws of Missouri for 1941, page 650. Of this law, only two classes are of any consequence, in so far as the question under consideration is concerned. These classes are No. 5 and No. 6. Class 3 of the budget law provides for an amount to be set aside for the purpose of upkeep, repair and replacement of bridges on other than State highways, but specifically excepts bridges in special road districts. Therefore, that class cannot apply.

Classes 5 and 6 of the budget law are as follows:

"Class 5. The county court shall next set aside a fund for the contingent and emergency expense of the county, the court may transfer any surplus funds from classes 1, 2, 3, 4 to class 5 to be used as contingent

and emergency expense. From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. No payment shall be allowed from the funds in this class for any personal service, (whether salary, fees, wages or any other emoluments of any kind whatever) estimated for in preceding classes.

"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."

Apparently it was the intention of the county court in this case to furnish a fund to be used for the aid of special road districts in cases of emergency, such as the washing out of a bridge as provided in their order. That would be the only manner in which such funds placed in Class 5 could be used. This Department rendered an opinion on June 21, 1935, holding that aid to a special road district could only be furnished from Class 6, but in that case the question of an emergency did not arise. In our instant case the question seems to relate to an emergency.

The purpose of Class 5 is very clear and can be readily understood by reading its provisions. It is a "contingent and emergency" fund. We believe that if the County Court wishes to set up an emergency fund to be used in a case such as this one, to-wit, for the repair of bridges, that they have the authority so to do. However, if they contemplate such an emergency, it should be shown that they intend to use a certain amount for such purposes. This is provided under Section 10914, R. S. Mo. 1939,

which in part prescribes the following:

"Class 5: Contingent and emergency expense.--The County court may transfer any surplus funds from class 1, 2, 3, and 4 to class 5 to be used as contingent and emergency expenses. Purposes, for which the Court proposes the funds in this class shall be used, shall be shown."

It will also be noted that the County Court may transfer surplus funds from Classes 1, 2, 3 and 4 to Class 5 to be used as a contingent or emergency fund. Apparently, the transfers mentioned above may be made at any time an emergency arises. However, there is no provision in Class 6 for transfer of funds from other classes to it. Furthermore, the court cannot pay any funds from Class 6 unless there is actually in hand, in cash, funds sufficient to pay all claims provided for in the first four classes, together with any expense incurred under Class 6 and only then after outstanding warrants constituting legal obligations have been paid.

There could be no purpose for transferring funds from Class 5 to Class 6 for the purpose of using such funds in an emergency, since emergencies of this kind are to be taken care of from funds allocated to Class 5. Further, any funds transferred could not be expended except under the circumstances set out in the preceding paragraph.

Conclusion

Therefore, it is the opinion of this Department that the county court may set up a fund to be used in cases of emergency to aid special road districts in Class 5 of their budget and may make transfers to such fund for that purpose. They must, however, designate for what this fund is to be used.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General