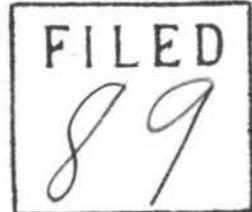


TAXATION Township road and bridge fund may not be
AND expended in improving streets in cities of
REVENUE the fourth class except for improving portions
 of such city streets which form connecting links
 in a system of public roads of the county.

March 27, 1944



Honorable D. D. Thomas, Jr.
Prosecuting Attorney
Carrollton, Missouri

Dear Mr. Thomas:

This is an acknowledgment of your enquiry of March 23, 1944, which is as follows:

"The town of Norborne, Carroll County, Missouri, is a town of Fourth Class. It is situated in Egypt Township and no part of the Town or Township is included in any special road district.

"Carroll County is under township organization.

"Property located within the limits of the Town of Norborne is assessed a township road and bridge tax, which tax money is used exclusively for road improvements, maintenance and repairs on roads in the Township, outside the city limits.

"On behalf of the City Officials and the Township Board, I respectfully request your opinion on the proposition of whether or not that portion of the township road and bridge fund, which is received from taxes assessed on property within the city limits may be used for improvement, repair and/or maintenance of the streets of the incorporated city?"

The above question was determined by the Supreme Court in the Case of State ex rel. v. Hackman, 270 Mo. 658, 671-2-3, in the following language:

"Upon a reconsideration of the question we have reached the conclusion that the language therein employed is too broad. What was there said was

based upon and apparently intended as in harmony with the rule announced in the cases of State ex rel. Kirkwood v. County Court, 142 Mo. 575, and Green City v. Martin, 237 Mo. 1. c. 484.

"With the holdings in those two cases, and the approval thereof in the recent case to which reference is above made, we now find no fault, but only undertake to say that they are, strictly speaking, not applicable to the issue now before us. The case of State ex rel. Kirkwood v. County Court, supra, held that a statute which undertook to authorize the county courts to pay out of the county's road and bridge fund a certain per cent thereof to the city treasurers of incorporated towns to be, by said municipalities, spent generally upon its roads and streets, was unconstitutional, because in violation of the constitutional, inhibition against grants of public money to a municipal corporation.

"In the case at bar, we are not dealing with a statute which makes a grant of public money to a municipal corporation but with a statute expressly authorized by the Constitution and which puts into operation a constitutional provision whereby money may be raised to build a connected system of public roads in the county. The fact that a portion of this fund as authorized is for the purpose of improving portions of city streets over which parts of said proposed improved roads run does not violate the constitutional provision against grants to a municipal corporation, but rather may be said to be in complete harmony with the Constitution, as amended in 1906, and under the plan contemplated the use of a part or the money in improving city sections of the proposed improved roads is for a county use or purpose (at least a quasi-county use or purpose),

as contradistinguished from a purely municipal use, as would be the case were the fund to be turned over absolutely to the municipality to be used as it might direct in purely local and general municipal street improvement. We think there is a vast difference between turning over a county fund to a municipal corporation to be spent as the municipality might direct for purely municipal functions (which was held in the above case would not be lawful), and the use of parts of the authorized county fund here involved, for improving small portions of city streets that are used to form connecting links in, or small sections of, a connected system of public roads of the county (which we now hold, in this case, to be permissible and lawful).

"The case of *Green City v. Martin*, supra, held that the township trustees of a county under township organization could not be compelled, by mandamus, at the instance of an incorporated city lying within such township, to turn over to said city a portion of said township's special road-and-bridge fund raised by taxation in 1909 under authority of the constitutional amendment of 1908 (now section 22 of article 10 of the Constitution), because at the time said taxes were levied and became due there was no statute which authorized such division of said taxes. That decision cannot be considered as in point here, and does not, we think, in any manner, conflict with the conclusions reached above.

"As expressly stated in the opinion, it was from the viewpoint of the two above cases that the above mentioned discussion was made in *State ex rel. St. Louis County v. Gordon*, supra.

"In so far, therefore, as the case of *State ex rel. St. Louis County v. Gordon* held that

a county fund could not be granted to a municipality, we think the holding is correct; but in so far as it may be said to express the thought that a portion of the proceeds of bond issued as here involved cannot be used for improving portions of city streets which form connecting links in a county system of roads, we are of the opinion, for the reasons stated in paragraph II above, that such view is an erroneous one and should not be followed."

The history of the legislation relating to the above subject, wherein the right of a city of the fourth class to participate in such road and bridge fund was involved, was reviewed by the Supreme Court in the case of Green City v. Martin, 237 Mo. 474, 484. The court there held:

"***It ordains, inter alia, that "all moneys arising therefrom shall be by the county court or township board of directors appropriated, set apart and kept . . . and . . . used for road and bridge purposes, and for no other purposes whatever." That language rivets the statute to the constitutional amendment, and, in its administrative details, points to the township board as the legal custodian and disburser of the special fund. By the same token it excludes the city. (Expressio unius, etc.) The force of section 11,767, if any, must be held to be spent on other road levies."

Therefore, it is the conclusion of this department that the township road and bridge fund, in counties under township organization, may not be expended in improving streets of a city of the fourth class which is within the boundary of such township, except portions of such streets as form connecting

Hon. D. D. Thomas, Jr.

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links in a system of public roads of the township.

Respectfully submitted,

SVM:EH

S. V. MEDLING
Assistant Attorney General

APPROVED

ROY MCKITTRICK
Attorney General