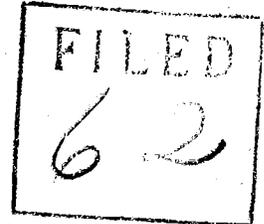


ROADS AND BRIDGES: Funds from which the salary of the highway engineer may be paid.

HIGHWAY ENGINEER:

February 21, 1947



*Copy to  
J. Smith*

Honorable Roy C. Miller  
Prosecuting Attorney  
Webster County  
Marshfield, Missouri

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Dear Sir:

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

"At your earliest convenience I would appreciate an opinion from your Office as to the following matter: Can the compensation for the county highway engineer provided for in H.C.S.H.B. No. 792, Sec. 1 (Mo. R.S.A., Sec. 8655) be paid by the county court out of the 'Special Road and Bridge Fund' which is established by H.C.S.H.B. No. 784, Sec. 1 (Mo. R.S.A., Sec. 8527) and which is to be used 'for road and bridge purposes and for no other purpose whatever.'"

The substance of your question is, "may the highway engineer's salary be paid out of the 'special road and bridge fund' created by Section 8527 of House Committee Substitute for House Bill No. 784 of the 63rd General Assembly."

Said Section 8527 authorizes county courts to levy an additional tax of not to exceed thirty-five cents on the one hundred dollars assessed valuation and requires this tax to be turned into the county treasury, designated as the "special road and bridge fund," and provides that this tax shall be used for road and bridge purposes and for no other purpose whatever. This Act limits the use of this special road and bridge fund to road and bridge purposes only.

We fail to find where a question similar to this one has been before the courts, however, we do find language in the Constitution of 1875 and in Section 8527, R. S. Mo. 1939, which similarly limits the use of these funds.

Section 22 of Article X of the Constitution of 1875 authorized the levy of a tax for "special road and bridge purposes." This section provided that "this tax should be used for road and bridge purposes, and for no other purpose whatsoever."

Section 8527, R. S. Mo. 1939, which was repealed by said H.C.S.H.B. No. 784, and which was the enabling act to carry out the provisions of said Section 22 of Article X of the Constitution of 1875, contained the same language with respect to the limitation of the use of the special road and bridge fund.

By said Section 8527, R.S. Mo. 1939, it was provided that all the tax received under the special road and bridge levy on property in a special road district should be paid over to the special road district containing such property. This provision of the old act would indicate that the lawmakers did not intend for any part of that tax to be used to pay the salary of the county highway engineer or any other county officer who had duties to perform in relation to the administration of that law, and we think the record will show that during the time these provisions of the law were in force, the salary of the county highway engineer was paid out of county revenue. Since the language in Section 8527 of said H.C.S.H.B. No. 784, which limits the use of this road and bridge fund, is similar to the language used in the Constitution of 1875, authorizing the special road and bridge levy and the enabling act, Section 8527, R. S. Mo. 1939, then it would seem that the same rule, with respect to the expenditure of this money, would be applicable.

By the provisions of H.C.S.H.B. No. 792, the county highway engineer is to be paid such compensation as the county court may deem advisable, but the Act does not designate from what fund this compensation is to be paid. Ordinarily, county officers' salaries are paid out of what is termed the "ordinary revenue" or "county revenue," unless otherwise provided by law. State ex rel. Hall v. Mohlroy, 274 S.W. 753, 1. c. 754. The tax for "county purposes" is authorized by Section 11 (b) of Article X of the Constitution of 1945 and by House Bill No. 468 of the 63rd General Assembly. This is the tax which is the source of the revenue for "county purposes" or "county revenue."

The County Budget Act (Section 10911, Laws of Missouri, 1941), under class four claims, requires the county court to set aside funds in this class to pay salaries where the same are, by law, payable out of ordinary revenue.

By referring to the laws relating to county officers and their salaries, we fail to find where it is specifically provided that such salaries be paid out of ordinary revenue. However, it is common knowledge that salaries of county officers are paid out of the ordinary revenue which, as stated above, is derived from the tax for county purposes under said Section 11 (b) of Article X of the Constitution of 1945 and House Bill No. 468 of the 63rd General Assembly.

The county highway engineer is a county officer. State ex rel. Koehler v. Bulger, 289 No. 441.

As stated above, said Section 8527 limits the use of the "special road and bridge fund" to "road and bridge purposes, and to no other purpose whatever." The Act does not say just what is included within the term "road and bridge purposes."

It will be seen under H.C.S.H.B. No. 792 and Article 9 of Chapter 46, R. S. Mo. 1939, that the duties of the county highway engineer are performed generally for road and bridge purposes. However, other county officers have duties to perform in connection with the administration of the laws enacted for road and bridge purposes, but these officers are generally paid out of county revenue. We refer to the taxing officers and the judges of the county courts and county clerks.

The county court, under Section 7 of Article VI of the Constitution of 1945, is required to manage all county business as is prescribed by law. We do not think that this term would be broad enough to authorize the county court to pay the salary of the county highway engineer out of this special road and bridge fund unless a statute permitted this to be done.

#### CONCLUSION

From the foregoing, it is the opinion of this department that the county court would not be authorized to pay the salary of the county highway engineer out of the "special road and bridge fund" authorized by Section 8527 of H.C.S.H.B. No. 784 of the 63rd General Assembly.

Respectfully submitted,

APPROVED:

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TWB:VLM