

COUNTY COURTS: County court does not have power to give a
ROADS AND BRIDGES: bridge on an abandoned county highway to a
special road district in another county, nor
does the county court have power to sell such
bridge to a special road district in another
county for a nominal consideration.

August 19, 1948

Honorable Marvin C. Hopper
Prosecuting Attorney
Linn County
Brookfield, Missouri



Dear Sir:

This is in reply to your letter of recent date requesting an official opinion of this department and reading as follows:

"I request an opinion from your Department on the following matter:

"A 39 yr. old County bridge, original cost about \$2500., is now located on Mussel Fork Creek in Linn County, Missouri a short distance west of the Linn County-Macon County boundary line. An unimproved one-quarter mile road leads from Highway No. 36 to said bridge, and formerly continued into Macon County, however, about 6-8 years ago the road was blockaded and closed a short distance east of said bridge in Macon County. The above mentioned one-quarter mile road in Linn County is now used exclusively by a tenant farm to gain access to a cornfield.

"The Linn County Court desires to cooperate with the New Cambria Special Road District in Macon County in completing a certain gravel road which will furnish an all weather route eastward from Bucklin, Linn County, Missouri to New Cambria, Macon County, Missouri. The Linn County Court desires to make a gift of said bridge to the Special Road District or to sell same for a nominal consideration, and the Special Road District

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will furnish all labor and material necessary to move said bridge to another point on Mussel Fork Creek about one mile north of the present location to a point in Macon County.

"My question is this--Under the above facts, can the Linn County Court make a gift of the bridge to the New Cambria Special Road District? Can the Linn County Court sell said bridge to the New Cambria Special Road District for a nominal consideration?"

Section 2480, R. S. Mo. 1939, provides as follows:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

The Supreme Court of this state, in the case of Butler County v. Campbell, 182 S. W. (2d) 589, 353 Mo. 413, 1. c. 419 said:

" * * * Under the laws of this state, the county court is vested with full power and authority to control and manage the real and personal property of the county and, 'for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county.' Sec. 2480, R. S. 1939. * * * It is apparent that 'county courts are by law constituted the guardians of the property and interests of their respective counties. "They occupy a position of trust" in that respect, and "in that relation are bound to the same measures of good faith toward the counties which is required of an ordinary trustee toward his cestui que trust, or an agent toward his principal.'" State ex rel. Garland County v. Baxter (Ark. Sup.), 8 S. W. 188; Willard v. Comstock (Wis. Sup.), 17 N. W. 401, 406. 'County courts are . . .

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the agents of the county, with no powers except what are granted, defined and limited by law, and, like all other agents, they must pursue their authority, and act within the scope of their powers.' State ex rel. Quincy, Mo. & Pac. R. Co. v. Harris, 96 Mo. 29, 37, 8 S. W. 794. The county courts act for the counties in relation to funds held in trust for public school purposes. Secs. 10376, 10378, and 10384, R. S. 1939; Montgomery County v. Auchley, 103 Mo. 492, 502, 15 S. W. 626. The members of the court, as public officers, do not act as individuals with relation to their own property, but as special trustees with limited authority. Saline County v. Thorp, 337 Mo. 1140, 88 S. W. (2d) 183, 186. They are required to act with reasonable skill and diligence, and to discharge their duties with that prudence, caution and attention which careful men usually exercise in the management of their own affairs. * * *

From the quoted portion of the Campbell case, supra, it is clear that the County Court of Linn County does not have the power to give away any county property, or to sell such property for a nominal consideration, unless such authority is specifically given to such court by a statute. We are unable to find any statute in the State of Missouri authorizing the county court of a county to give a bridge to a special road district in another county, or to sell such bridge to the special road district in another county for a nominal consideration. We believe it to be inherent in Section 2480, quoted supra, that the county court is under an obligation to the citizens of the county to receive the highest possible price for any county property that is sold.

Section 8540, R. S. Mo. 1939, provides as follows:

"Whenever the county court of any county, upon investigation, shall be satisfied that the citizens of said county will be benefited by the construction of a bridge in an adjoining county and within one mile of the boundary line dividing said counties, the aforesaid county court may unite with the county court of said adjoining county in causing said bridge to be built and may contribute to the expense of building said bridge in any sum not to exceed one-half the cost of such bridge, and may make an appropriation for the payment of same."

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Under authority of Section 8540, if the bridge is within one mile of the boundary line dividing Linn County from Macon County, and the County Court of Macon County wishes to pay for the cost of removing the bridge from Linn County and installing it in the New Cambria Special Road District in Macon County, we believe that the County Court of Linn County would be authorized to give the bridge to Macon County, or to charge Macon County only so much as would make the cost of putting the bridge in Macon County the same amount for both counties. The County Court of Macon County would have the authority to make this agreement under the provisions of Section 8688, R. S. Mo. 1939, if the New Cambria Special Road District is one organized under Article 10, Chapter 46, R. S. Mo. 1939.

CONCLUSION

It is the opinion of this department that the County Court of Linn County does not have the authority to give to the New Cambria Special Road District of Macon County a bridge that is a part of an abandoned road in Linn County, and that the County Court of Linn County has no authority to sell the bridge to the Special Road District for a nominal consideration.

It is further the opinion of this department that if the Special Road District in Macon County is one organized under Article 10, Chapter 46, R. S. Mo. 1939, the County Court of Linn County may give the bridge to Macon County, or charge only so much for the bridge as would equalize the cost of such bridge between the two counties, if the bridge is within one mile of the line separating the two counties.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General