

ROADS AND BRIDGES,) The county court may exercise discretion when
MAINTENANCE:) authorized to maintain a county bridge.

October 22, 1951

10/22/51

Mr. Joe Collins
Prosecuting Attorney
Cedar County
Stockton, Missouri



Dear Mr. Collins:

We have given careful consideration to your recent request for an opinion, which request is as follows:

"I am writing you concerning Road District No. 5 of Cedar County, Mo., which road district is not a special road district. The assessed valuation of this road district is \$53,270. There is a bridge in this district which crosses Cedar Creek which is a sizeable stream. Reputable people living in this road district have asked the County Court to maintain this bridge as they say their district is not able to obtain it.

"The money anticipated by the County Budget in the road and bridge fund for this year has already been expended and the county court has refused to repair the bridge.

"Is it the duty of the County Court under Sections 8534 and 8552 Laws of Missouri relating to roads, highways and bridges 1949 and 50 Revision issued by Walter H. Toberman, Secretary of State, and under the law to maintain the bridge or is it within their discretion? If it is not the duty of the County Court to maintain the bridge

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and the district does not have enough assessed valuation to maintain it, then the bridge when it becomes dangerous for travel would have to be abandoned. Two mail routes and three milk routes travel over this bridge daily. The road running across the bridge is the main artery between Highway 54 and 64 east and west in Cedar County, Missouri."

The two sections referred to in your letter are incorporated as Sections 234.010 and 234.030, RSMo 1949.

Section 234.010 is as follows:

"Each county court shall determine what bridges shall be built and maintained at the expense of the county and what by the road districts; provided, that no road district shall be compelled to build a bridge which costs fifty dollars or more."

Section 234.030 is as follows:

"Whenever the highway engineer of any county is notified by any road overseer, or other reputable person, that any county bridge has been badly damaged by recent floods, or is otherwise in imminent danger of falling in, or is dangerous in any manner to public travel, said highway engineer, with the consent of one or more of the county judges, may contract with some bridge contractor, or other competent person, and have said bridge repaired forthwith, and the county court, at the next term thereof, shall allow a reasonable compensation for such repair, not to exceed the reasonable cost thereof, plus ten per cent."

There seems to be nothing in these statutes or any other laws of Missouri to make it mandatory on the county

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court to maintain the public bridges of the county. The Supreme Court of the state has consistently held that the county court has wide discretion in all such matters.

In the case of State ex rel. v. Thomas, 183 Mo. 220, l.c. 229, the court said:

"* * * The provisions of the statute, following down to and including sections 5193 and 5194, prescribe in detail the manner in which the power and discretion thus vested in the county court shall be exercised under different and variant circumstances, and among these under the circumstances set out in those two sections. But the law nowhere contemplates that any bridge shall be built at the expense of the county, in whole or in part, except such a bridge as the county court shall have determined to be necessary, in view of its locality, utility, cost, and the condition of the public fund that may be used for that purpose, considered in connection with other like claims upon such funds for like purposes. The discretion thus vested in the county can not be wrested from it, or exercised by any other tribunal."

In the case of State ex rel. v. Everett, 245 Mo. 706, l.c. 719, the court said:

"The discretion to expend the special road and bridge fund in the manner which will be most conducive to the general welfare of the inhabitants of the counties has been invested in county courts elected by the people; and it is a well-known rule of law that where judicial officers possess discretion as to how their duty shall be performed, their discretion will not be interfered with by the writ of mandamus. * * *"

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In the case of Drainage District v. Campbell, 196 S.W. 744, 1.c. 745, the court said:

"Several questions present themselves. Assuming mandamus will lie in such a case, can a drainage district, as such, maintain mandamus to compel county judges to repair bridges of any sort? Is the obligation to repair, under the facts pleaded, upon the county or the drainage district? Under our laws, can mandamus be employed to enforce the repair of bridges? In the view we take, the answer to the last question ends the case. If it be assumed the obligation is upon the county, yet this proceeding cannot be maintained. Bates county is under township organization, but the bridges are not such as come within the scope of the authority and duty of the township board. Sections 11773, 11774, R. S. 1909. Assuming the bridges are of a character to bring them within the scope of the county court's authority (and this is essential to appellant's case), that court's duty to repair is defined by section 10501, R. S. 1909, and under this section the county court has a discretion in the premises which cannot be controlled by mandamus. * * *"

CONCLUSION

It is the opinion of this office that the county court is not under duty to repair a county bridge but may exercise discretion in the premises where authorized by law to maintain such property.

Respectfully submitted,

APPROVED:

B. A. TAYLOR
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BAT/fh